



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 26 2019

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**Article number: 7018 1830 0000 9640 0027**

Mr. Joel Endzweig  
Chief Financial Officer  
Aladdin Packaging LLC  
115 Engineers Road  
Hauppauge, New York 11788

**In the Matter of Aladdin Packaging LLC**  
**Docket No.: RCRA-02-2019-7110**

Dear Mr. Endzweig:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency (EPA), Region 2, at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

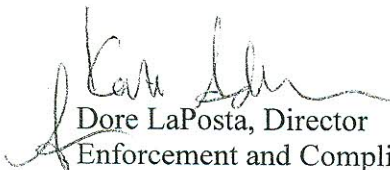
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference does not substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the Consolidated Rules of Practice, which govern this proceeding. (A brief discussion of some of these rules appears in the latter part of the Complaint.)

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on EPA's Supplemental Environmental Projects Policy. Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Dore LaPosta", is written over the typed name.

Dore LaPosta, Director  
Enforcement and Compliance Assurance Division

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures

7/10 8:27 30 16

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

-----x  
In the Matter of

Aladdin Packaging LLC

Respondent.

Proceeding under Section 3008 of the  
Solid Waste Disposal Act, as amended.  
-----x

**COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY  
FOR HEARING**

Docket Number RCRA-02-2019-7110

**I. COMPLAINT**

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the United States Environmental Protection Agency's ("EPA") preliminary determination that Aladdin Packaging LLC (hereafter "Aladdin" or "Respondent") has violated provisions of RCRA and regulations concerning the management of hazardous waste at its facility in Hauppauge, New York.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005) 74 Fed. Reg. 31380 (July 1, 2009) and 78 Fed. Reg. 15299 (March 11, 2013). New York is authorized for most hazardous waste regulations issued by EPA, including the relevant regulations mentioned in this Complaint, as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.



The Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division, EPA, Region 2, has been duly delegated the authority to institute this action. For all times relevant to this Complaint, Complainant hereby alleges:

**Jurisdiction**

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

**Notice**

2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C § 6928(a)(2), EPA has given notice of this action to the State of New York.

**General Allegations**

3. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 *et seq.*
4. Pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), the Administrator of EPA has promulgated regulations for the management of hazardous waste including standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270 and 273.
5. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA, which includes the regulations referenced above.
6. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 required EPA to adjust its penalties for inflation on a periodic basis. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), is \$99,681 per day of each violation occurring after November 2, 2015 where penalties are assessed on or after February 6, 2019. 40 C.F.R. Part 19.4 and 84 Federal Register (“Fed. Reg.”) 2056, 2059 (Feb. 6, 2019) and 84 Fed. Reg.5955 (February 25, 2019).

**Respondent**

7. The Respondent is Aladdin.
8. Respondent is a domestic limited liability corporation organized pursuant to the laws of New York State.
9. Respondent owns and operates a manufacturing plant located at 115 Engineers Road, Hauppauge, New York 11788. The plant prints packaging products.

10. Respondent is a “person” as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 6 New York Code of Rules and Regulations (“N.Y.C.R.R.”) § 370.2(b).
11. The Hauppauge location where Respondent conducts its manufacturing business constitutes a “facility” as that term is defined in 6 N.Y.C.R.R. § 370.2(b) (hereinafter “facility”).
12. Respondent is and has been the "owner" and “operator” of the facility as those terms are defined in 46 N.Y.C.R.R. § 370.2(b).
13. On or about December 1, 2011, Aladdin submitted a Section 3010 Notification of Regulated Waste Activity to EPA informing EPA that it would be a large quantity generator of hazardous waste. In response, EPA on December 21, 2011, assigned Respondent EPA Identification Number NYR000188425.
14. Respondent never submitted a Part A or a Part B Permit Application to EPA for its facility and never received “interim status” or a hazardous waste permit to treat, store or dispose of hazardous waste at its facility.
15. Respondent is and has been a “large quantity generator” of “hazardous waste” at its facility, since at least December 21, 2011, as those terms are defined in 6 N.Y.C.R.R. § 370.2(b). The requirements for generators are set forth in 6 N.Y.C.R.R. Part 372.
16. Respondent has generated, and continues to generate, at least 1000 kilograms (“kg”) of hazardous waste in a calendar month at its facility. (Generators that generate 1000 kg or more in a month are commonly referred to as large quantity generators (“LQGs”).)
17. Respondent has been holding, and continues to hold, hazardous waste generated at its facility in a hazardous waste container storage area and/or hazardous waste tank(s) for a temporary period of time, constituting “storage” as that term is defined in 6 N.Y.C.R.R. § 370.2(b). Respondent stores hazardous waste on site for a period of 90 days or less.
18. Pursuant to 6 N.Y.C.R.R. § 372.2(a)(8)(ii), LQGs may accumulate hazardous waste on site without interim status or a permit for 90 days or less provided that they comply with, among other things, the applicable requirements set forth in 6 N.Y.C.R.R. §§ 373-3.27 (air emission standards for process vents), 373-3.28 (air emission standards for equipment leaks), and 373-3.29 (air emission standards for tanks, surface impoundments and containers). Having failed to comply with certain requirements set forth in 6 N.Y.C.R.R. §§ 373-3.28 and 373-3.29, Respondent is subject to the requirements set forth in 6 N.Y.C.R.R. Part 373-2. See 6 N.Y.C.R.R. § 373-2.1(b).

**6 N.Y.C.R.R. Part 373-2.28**

19. Six N.Y.C.R. Part 373-2.27 sets forth air emission standards for “equipment,” as that term is defined in 6 N.Y.C.R. § 373-2.27(b)(12) that contains or contacts hazardous waste



with organic concentrations of at least 10 percent by weight (hereafter referred to as "organic hazardous waste"). These requirements are set forth at 6 N.Y.C.R.R. § 373-2.28(a)(2).

20. Since at least 2011, Respondent has used organic solvents to clean its three printing presses. Organic solvents are used twice and between use are stored in a compartmentalized tank near each printing press. A commercial grade organic solvent is first used as a "second" cleaning on each printing press. This once used organic solvent is then conveyed to the larger portion of the compartmentalized tank situated near the printing press. Next, this once used organic solvent is used for a "first" cleaning on a dirty printing press and then conveyed back to the smaller portion of the compartmentalized tank near that printing press. After this twice used organic solvent has been returned to the smaller portion of the compartmentalized tank, it is then conveyed from that tank through pipes and equipment, including pumps and valves, to a 55-gallon satellite accumulation container (drum). Once the 55-gallon satellite accumulation container reaches a desired quantity, the container is brought to the container storage area to be stored until it is pumped to the distillation unit for reclamation.
21. Pursuant to 6 N.Y.C.R.R. § 373-2.28(a)(5), equipment that contains or contacts organic hazardous waste for less than 300 hours per calendar year is excluded from certain specified requirements provided that the equipment is identified in the facility's operating log as required by 6 N.Y.C.R.R. § 373-2.28(o)(7)(v).
22. During the period of time between at least November 30, 2017 and August 20, 2019, Respondent did not identify in the facility's operating log any equipment at its facility as being subject to the 6 N.Y.C.R.R. Subpart 373-2.28 requirements and did not identify whether any equipment subject to the 6 N.Y.C.R.R. Subpart 373-2.28 requirements came into contact with or contained organic hazardous waste for less than 300 hours.

#### **6 N.Y.C.R.R. Part 373-2.29**

23. Six N.Y.C.R. Part 373-2.29 sets forth air emission standards for, among other things, tanks that receive hazardous waste with an average volatile organic concentration ("VOC") of at least 500 parts per million by weight ("ppmw"). See 6 N.Y.C.R.R. § 373-2.29(c)(3)(i). These requirements are set forth in 6 N.Y.C.R.R. Part 373-2.29.
24. Since at least November 2017, Respondent has stored and continues to store hazardous waste with an average VOC of at least 500 ppmw in its hazardous waste tank(s).

#### **EPA Investigative and Initial Enforcement Activities**

25. On or about November 30, 2017, a duly designated representative of EPA conducted an inspection of the facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with RCRA and its implementing regulations ("the Inspection").

26. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about June 19, 2018, EPA issued Respondent an Information Request Letter ("IRL") and a Notice of Violation ("NOV") regarding its management of hazardous waste at its facility.
27. On or about July 16, 2018 and, again, on or about July 31, 2018, Respondent submitted responses to EPA's IRL/NOV. These submissions were prepared by an agent of Respondent in the course of carrying out its employment or duties.
28. In its July 31, 2018 response to EPA's IRL/NOV, Respondent admitted "the facility does not have documentation to show compliance with Subpart BB of the standards" because the [compartmentalized] tank was not considered to be a hazardous waste tank."
29. In an email Respondent sent to the EPA on August 20, 2019, it admitted that its solvent was an organic solvent and that its lines were not purged after this organic hazardous waste solvent was pumped from the compartmentalized tank to the tank to the satellite accumulation container.

**Count 1**  
**Failure to Maintain Required Records for Equipment**

30. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
31. Six N.Y.C.R.R. § 373-2.28(o) sets forth the recordkeeping requirements for owners and operators subject to air emission standards.
32. Six N.Y.C.R.R. § 373-2.28(o)(2) requires owners and operators of equipment to which air emission standards applies to record, among other things, the following information in the operating log: (a) equipment identification numbers and hazardous waste management unit identification; (b) approximate locations of equipment within the facility; (c) the type of equipment (*i.e.*, valve or pump); and (d) the percentage by weight total organics in the waste stream at the equipment.
33. Six N.Y.C.R.R. § 373-2.28(o)(7)(vi) further requires owners and operators with equipment subject to the requirements set forth in 6 N.Y.C.R.R. Subpart 373-2.28 to record in the operating record, among other things, all equipment that comes into contact with organic hazardous waste for less than 300 hours.
34. During the period of time between November 30, 2017 and August 20, 2019, if not later, Respondent's operating log did not contain any information regarding equipment subject to the air emission standards.
35. Respondent's failure to record and maintain requisite information regarding equipment subject to the air emission standards is a violation of 6 N.Y.C.R.R. § 373-2.28(o).



**Count 2**

**Failure to Conduct Required Monitoring of Pumps in Light Liquid Service**

36. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
37. Pursuant to 6 N.Y.C.R.R. § 373-2.28(c)(1) each pump in light liquid service shall be monitored monthly to detect leaks by methods specified in 6 N.Y.C.R.R. § 373-2.28(n)(2).
38. Pursuant to 6 N.Y.C.R.R. § 373-2.28(n)(2)(i), monitoring shall comply with Reference Method 21 in 40 C.F.R. Part 60.
39. During the period of time between November 30, 2017 and August 20, 2019, if not later, Respondent had three pumps in “light liquid service,” as that term is defined in 6 N.Y.C.R.R. § 373-2.27(b)(21), at its facility.
40. During the period of time between November 30, 2017 and August 20, 2019, if not later, Respondent failed to conduct monthly leak detection monitoring pursuant to Reference Method 21 on the three pumps in light liquid service at its facility.
41. Respondent’s failure to conduct monthly monitoring pursuant to Method 21 on its three pumps in light liquid service during the above referenced time period is a violation of 6 N.Y.C.R.R. § 373-2.28(c)(1).

**Count 3**

**Failure to Conduct Required Monitoring of Valves in Light Liquid Service**

42. Complainant re-alleges each allegation contained in the above paragraphs as if fully set forth herein.
43. Pursuant to 6 N.Y.C.R.R. § 373-2.28(h)(1), each valve in light liquid service shall be monitored monthly to detect leaks by the methods specified in 6 N.Y.C.R.R. § 373-2.28(n)(2)
44. Pursuant to 46 N.Y.C.R.R. § 373-2.28(n)(2)(i), monitoring shall comply with Reference Method 21.
45. During the period of time between November 30, 2017 and August 20, 2019, if not later, Respondent had six valves in “light liquid service,” as that term is defined in 6 N.Y.C.R.R. § 373-2.27(b)(21), at its facility.
46. During the period of time between November 30, 2017 and August 20, 2019, if not later, Respondent failed to perform monthly leak detection monitoring pursuant to Reference Method 21 on the six valves at its facility.



47. Respondent's failure to conduct monthly monitoring on its valves in light liquid service pursuant to Reference Method 21 during the above referenced time period is a violation of 6 N.Y.C.R.R. § 373-2.28(h)(1).

## **II. PROPOSED CIVIL PENALTY**

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: <https://www.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf>. This 2003 RCRA Civil Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 ("Inflation Adjustment Act"), 28 U.S.C. § 246, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. The adjustments were made pursuant to the January 11, 2018, memorandum, "Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule (effective January 15, 2018)."

Pursuant to the Inflation Adjustment Act, the maximum statutory civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), is \$99,681 per day for each violation occurring after November 2, 2015 where penalties are assessed on or after February 6, 2019. See, 84 Federal Register ("Fed. Reg.") 2056, 2059 (Feb. 6, 2019) and 84 Fed. Reg. 5955 (February 25, 2019).

A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are also included in Attachment II.

Count 1: \$18,600;

Count 2/3: \$47,400;

Total Proposed Penalty is **\$66,000**

### **III. COMPLIANCE ORDER**

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to Respondent:

The Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order correct, to the extent possible, the past violations alleged in Counts 1, 2, and 3 of this Complaint. Respondent shall thereafter maintain compliance at its facility with the requirements cited in Counts 1, 2, and 3.

This Compliance Order shall take effect with respect to the Respondent within thirty (30) days of date of service of the Order, unless by that date the Respondent has requested a hearing pursuant to 40 C.F.R. Section 22.15. See 42 U.S.C. Section 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Mr. William Chernes  
Enforcement Officer  
RCRA Compliance Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21st Floor  
New York, NY 10007-1866

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at its facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at its facility.

### **IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to Section 3008(c) of the Act, 42 U.S.C. § 6928(c), and in accordance with the 84 *Fed Reg* 2056 (February 6, 2019) and 84 *Fed. Reg.* 5955 (February 25, 2019) codified at 40 C.F.R. Part 19), a violator failing to comply with the requirements of a Compliance Order that has taken effect within the time specified in the Order is liable for a civil penalty up to \$60,039 for each day of continued noncompliance.

### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation were originally set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled CONSOLIDATED RULES OF PRACTICE



GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS (“Consolidated Rules of Practice”), and which are codified at 40 C.F.R. Part 22. These rules were amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 Fed. Reg. 2230, January 9, 2017. These amendments became effective on May 22, 2017 and apply to all new case filings. A copy of the current Consolidated Rules of Practice, incorporating these amendments, accompanies this “Amended Complaint, Compliance Order, and Notice of Opportunity for Hearing” (hereinafter the “Complaint”).

Upon receipt of a compliance order issued under Section 9006(a) of the Act, 42 U.S.C. § 6991e(a) Respondent may seek administrative review in accordance with 40 C.F.R. §§ 22.15 and 22.37(b). The Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, once it is final and reviewable pursuant to RCRA Section 9006(b), 42 U.S.C. § 6991e(b), and 40 C.F.R. §§ 22.31 and 22.37(b).

#### **A. Answering the Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint. 40 C.F.R. § 22.15(a). Such Answer must be filed within 30 days after service of a Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, N.Y. 10007-1866**

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in “D” below)

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding); and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).



Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

### **B. Opportunity to Request a Hearing**

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such Order is served, such Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

### **C. Failure to Answer**

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (*i.e.*, in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by the Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against the Respondent, and to collect the assessed penalty amount. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

### **D. Filing of Documents Filed After the Answer**

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:



If filing by the United States Postal Service:

Headquarters Hearing Clerk  
Office of the Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900R  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Headquarters Hearing Clerk  
Office of the Administrative Law Judges  
Ronald Reagan Building, Room M1200  
U.S. Environmental Protection Agency  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

#### **E. Exhaustion of Administrative Remedies**

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served" upon the parties. 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "... 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

#### **VI. INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondent's ability to continue in business; and (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, or any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

**Gary Nurkin**  
**Assistant Regional Counsel**  
**Office of Regional Counsel**  
**U.S. Environmental Protection Agency, Region 2**  
**290 Broadway, 16th floor**  
**New York, New York 10007-1866**  
**(212) 637-3195 (phone)**  
**nurkin.gary@epa.gov**

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waive their right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

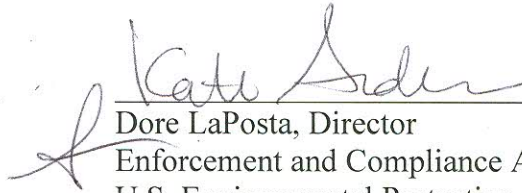
Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminates this administrative litigation and civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect their obligation and responsibility to comply with all applicable statutory and regulatory requirements governing the installation, operation, maintenance and closure of underground storage tanks (including associated equipment, such as piping), and to maintain such compliance.



**VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR  
CONFERENCE**

If, instead of filing an Answer, Respondent wishes to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified above.

Dated: SEP 26 2019

  
Dore LaPosta, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, NY 10007-1866

To: Mr. Joel Endzweig  
Chief Financial Officer  
Aladdin Packaging LLC  
115 Engineers Road  
Hauppauge, New York 11788

cc: Thomas Killeen, Chief  
RCRA Compliance and Technical Support Section  
9<sup>th</sup> Floor  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-7256

**CERTIFICATE OF SERVICE**

This is to certify that on \_\_\_\_\_, 2019, I have caused to be mailed a copy of the foregoing Complaint, Compliance Order, together with Attachments I and II, and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2019-7110, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Mr. Joel Endzweig  
Chief Financial Officer  
Aladdin Packaging LLC  
115 Engineers Road  
Hauppauge, New York 11788

I hand-carried the original and a copy of the foregoing Complaint, with the accompanying attachments, to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, at 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

Dated: \_\_\_\_\_

**9/27/19**  
New York, New York

  
Yolanda Majette, Secretary



**ATTACHMENT I**

**PENALTY CALCULATION WORKSHEET  
WITH NARRATIVE EXPLANATION**

Aladdin Packaging LLC

Aladdin Packaging LLC  
**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet (Count 1)**

**Respondent:** Aladdin Packaging LLC

**Facility Address:** 115 Engineers Road, Hauppauge, New York 11788

**Requirement Violated:** 6 N.Y.C.R.R. § 373-2.28 - Respondent failed to identify equipment subject to Subpart BB in its operating log.

**PENALTY AMOUNT FOR COMPLAINT-**

1. Gravity based penalty from matrix	\$18,608
(a) Potential for harm	MODERATE
(b) Extent of Deviation	MAJOR
2. Select an amount from the appropriate multiple matrix cell	\$0
3. Multiply line 2 by number of number of days minus 1:	\$0
4. Add line 1 and line 3	\$18,608
5. Percent increase/decrease for good faith	0%
6. Percent increase for willfulness/negligence	0%
7. Percent increase for history of noncompliance	0%
8. Total lines 5 through 7	0%
9. Multiply line 4 by line 8	\$0
10. Calculate economic benefit -- de minimis	\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint*	<b>\$18,600*</b>

**\* Penalties have been rounded to the nearest hundred.**



**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet (Count 1)**

1) Gravity Based Penalty

- a) Potential for Harm - The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure; and the adverse impact of the noncompliance on the regulatory scheme. The RCRA regulatory program is undermined when an owner/operator of a facility subject to the Subpart BB fails to identify the regulated equipment and fails to comply with the recordkeeping requirements. Equipment identification is the first step in ensuring that the Subpart BB requirements are complied with. In this case, the Potential for Harm was determined to be MODERATE due to the small quantity of regulated equipment involved (3 pumps and 6 valves) and therefore reduced risk of volatile organic hazardous waste exposure.
- a)
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Respondent failed to identify any of its Subpart BB equipment in its operating log and failed to comply with any of the recordkeeping requirements associated with the Subpart BB requirements.

The applicable cell ranges from \$13,534 to \$18,608. The highpoint of the cell matrix (\$18,608) was selected.

- c) Multiple/Multi-day – Since Respondent only had to perform this task once, EPA has not calculated a multiple component.

2) Adjustment Factors

- a) Good Faith - Based upon facility specific factors and available information, no adjustment has been made at this time.
- b) Willfulness/Negligence - Not applicable.
- c) History of Compliance - Based upon facility specific factors and available information, no adjustment has been made at this time.
- d) Ability to Pay - Not applicable.
- e) Environmental Project - Not applicable.
- f) Other Unique Factors - Not applicable
- 3) Economic Benefit - No penalty is being sought to recoup Respondent's economic benefit for this violation since Respondent and/or its employees should have been able to identify such equipment and maintain records at no or low additional cost to Respondent.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet (Counts 2 and 3)**

**Respondent:** Aladdin Packaging LLC.

**Facility Address:** 115 Engineers Road, Hauppauge, New York 11788

**Requirements Violated:** 6 N.Y.C.R.R. § 373-2.28 - Respondent failed to perform monthly leak detection on pumps and valves in light liquid service.

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$18,608
(a) Potential for harm	MODERATE
(b) Extent of Deviation	MAJOR
2. Select an amount from the appropriate multiple matrix cell	\$1,439
3. Multiply line 2 by number of number of days minus 1: (21-1=20)	\$28,780
4. Add line 1 and line 3	\$47,388
5. Percent increase/decrease for good faith	0%
6. Percent increase for willfulness/negligence	0%
7. Percent increase for history of noncompliance	0%
8. Total lines 5 through 7	0%
9. Multiply line 4 by line 8	\$0
10. Calculate economic benefit -- de minimis	\$0
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint*	<b>\$47,400*</b>

**\* Penalties have been rounded to the nearest hundred.**



**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet (Counts 2 and 3)**

1) Gravity Based Penalty

- b) Potential for Harm - The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure and the adverse impact of the non-compliance on the regulatory scheme. Where an owner/operator of a facility generating hazardous waste fails to perform the requisite monitoring set forth in the Subpart BB regulations, the adverse impact on the regulatory scheme is maximized. This follows because, by failure to conduct the requisite monitoring, Respondent increased the chance of hazardous waste releases not being detected and remedied and this failure undermines the regulatory scheme. In addition, if the owner/operator does not comply with the Subpart BB standards, there is a much greater likelihood that the regulated equipment will release volatile organic hazardous waste to the atmosphere and increase the risk of human or environmental exposure. In this case, the Potential for Harm was determined to be MODERATE due to the small quantity of regulated equipment involved (3 pumps and 6 valves) and therefore reduced risk of volatile organic hazardous waste exposure.
- c) Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR because the facility had not complied with any of the monitoring standards for Subpart BB from at least November 30, 2017 through August 20, 2019. The applicable cell ranges from \$13,534 to \$18,608. The high-point for the cell (\$18,608) was selected because although there was only 9 pieces of regulated equipment, the facility had not complied with the Subpart BB monthly monitoring requirements.
- d) Multiple/Multi-day – EPA is seeking multi-day penalties but only for one each month in which Respondent did not perform monitoring of the regulated equipment involved (3 pumps and 6 valves) from the time of EPA’s November 30, 2017 Inspection to August 20, 2019 when Respondent communicated to EPA.

The applicable multi-day matrix cell ranges from \$677 to \$3,722. Slightly less than the mid-point of the cell matrix was selected because of the limited pumps and valves subject to the monitoring requirements

2) Adjustment Factors

- a) Good Faith - Based upon facility specific factors and available information, no adjustment has been made at this time.
- b) Willfulness/Negligence - Not applicable.
- c) History of Compliance - Based upon facility specific factors and available information, no adjustment has been made at this time.
- d) Ability to Pay - Not applicable.
- e) Environmental Project - Not applicable.
- f) Other Unique Factors - Not applicable

Economic Benefit - No penalty is being sought to recoup Respondent's economic benefit for this violation since Respondent and/or its employees should have been able to monitor the equipment with little additional cost.