



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
1 Congress Street, Suite 1100  
BOSTON, MA 02114-2023

September 26, 2008

Ms. Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. Environmental Protection Agency  
Region 1  
One Congress St.  
Suite 1100  
Boston, MA 02114-2023

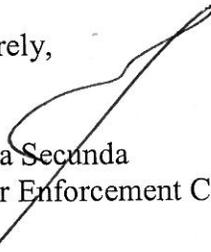
Re: In the Matter of The Jackson Laboratory, Inc.; Proceeding under Sections 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a); and Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c)  
Docket Nos: RCRA- 01-2008-0074; EPCRA- 01-2008-0091

Dear Mrs. Santiago:

Enclosed for filing in the above-referenced matter are two copies of the Complaint and Compliance Order, and a certificate of service.

Thank you for your attention to this matter.

Sincerely,

  
Joshua Secunda  
Senior Enforcement Counsel

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
1 Congress Street, Suite 1100  
BOSTON, MA 02114-2023

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

September 26, 2008

Richard P. Woychik, Ph.D.  
President and Chief Executive Officer  
The Jackson Laboratory, Inc.  
600 Main Street  
Bar Harbor, ME 04609

Re: In the Matter of The Jackson Laboratory, Inc.;  
Docket Nos: RCRA- 01-2008-0074; EPCRA- 01-2008-0091

Dear Dr. Woychik:

Enclosed is an administrative Complaint which the U.S. Environmental Protection Agency ("EPA") is issuing to the Jackson Laboratory, Inc. ("Jackson Laboratory") due to our determination that Jackson Laboratory has violated the Resource Conservation and Recovery Act ("RCRA") and the Emergency Planning and Community Right-to-Know Act ("EPCRA"). Pursuant to the authority of RCRA Section 3008(a), 42 U.S.C. Section 6928(a), and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), EPA is seeking \$213,670 in civil penalties.

This enforcement action is based on violations EPA discovered during an inspection of your facility on November 8-9, 2006. The attached Complaint discusses: a) the statutory authorities for EPA's enforcement action, b) the nature of the alleged violations, c) the proposed penalty, and d) the measures that Jackson Laboratory must take to come into compliance with RCRA and EPCRA.

Please be advised that Jackson Laboratory has the right to request a hearing regarding the violations alleged in the Complaint and the appropriateness of the proposed penalties. If Jackson Laboratory wishes to request a hearing, it must submit, within thirty days of receiving this letter, a written request to the EPA Regional Hearing Clerk at the address set forth in the enclosed Complaint. The written request, which would be submitted with the Answer to the Complaint, must follow the requirements of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties, set forth at 40 C.F.R. Part 22. A copy of 40 C.F.R. Part 22 is enclosed. If Jackson Laboratory does not submit an Answer within the thirty day period, it may be found in default. Once in default, Jackson Laboratory will have waived its right to a hearing, and each allegation of violation will be deemed to be admitted. As a result, the full amount of the proposed penalty may be assessed against the party in default.

To avoid protracted and potentially expensive litigation, EPA is willing to engage in settlement negotiations. If you wish to explore the possibility of settlement, please contact Joshua Secunda of my staff at (617) 918-1736.

You should know that many Respondents perform Supplemental Environmental Projects ("SEPs") as part of their settlements with EPA. SEPs are environmentally beneficial projects that a Respondent agrees to undertake in settlement of an environmental enforcement action and that the Respondent is not otherwise legally required to perform. In return, EPA considers some percentage of the cost of the SEP as a factor in establishing the final penalty that the Respondent will pay. EPA has issued a SEP Policy to help Respondents and EPA staff determine: a) whether a proposed SEP is acceptable, and b) how much of the penalty should be mitigated if the Respondent performs the proposed SEP. A copy of that policy is enclosed.

Jackson Laboratory has the right to be represented by an attorney at any stage of the proceeding, including any informal discussions with EPA. If you have any questions, please contact Joshua Secunda at the telephone number listed above.

Sincerely,



Joel Blumstein, Enforcement Manager  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region 1

Enclosures

1. Complaint
2. RCRA Civil Penalty Policy
3. 40 C.F.R. Part 22 Rules
4. SEP Policy
5. Copy of letter to Hearing Clerk

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In the Matter of: )

The Jackson Laboratory )  
600 Main Street )  
Bar Harbor, Maine 04609 )

Respondent. )

EPA I.D. No. MED042140483 )

Proceeding under Sections 3008(a) of the )  
Resource Conservation and Recovery Act, )  
42 U.S.C. § 6928(a); and Section 325(c) )  
of the Emergency Planning and Community )  
Right-to-Know Act, 42 U.S.C. § 11045(c) )

EPA Docket Numbers  
RCRA- 01-2008-0074  
EPCRA- 01-2008-0091

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

**I. STATEMENT OF AUTHORITY**

This Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) is filed pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter EPCRA), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

The Complainant is the Enforcement Manager, Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1 (EPA or Complainant).

Jackson Laboratory, Inc. (Respondent) is hereby notified of EPA's determination that it has violated Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924; the regulations promulgated thereunder at 40 C.F.R. Parts 262 and 268, and Chapter 13 of Title 38 of the Maine Revised Statutes and the regulations promulgated thereunder at Chapter 850 et seq. (the Maine Rules).

This Complaint also alleges that Respondent violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the federal regulations that set out these statutory requirements at 40 C.F.R. Part 370.

## **II. NATURE OF ACTION**

1. The portion of this Complaint issued pursuant to RCRA, 42 U.S.C. §§ 6901-6987 seeks to obtain civil penalties and compliance. Complainant seeks civil penalties under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for Respondent's violations of regulations promulgated pursuant to RCRA, Chapter 13 of Title 38 of the Maine Revised Statutes and the Maine Rules.
2. The portion of this Complaint issued pursuant Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), seeks to obtain civil penalties for violations of Section 312(a) of EPCRA and 40 C.F.R. §§ 370.20 and 370.25.
3. Notice of commencement of the RCRA action has been given to the State of Maine pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

### **III. RCRA STATUTORY AND REGULATORY FRAMEWORK**

4. RCRA was enacted on October 21, 1976, and amended thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (HSWA). RCRA established a program for the management of hazardous wastes, to be administered by the Administrator of EPA. The regulations promulgated by the Administrator are codified at 40 C.F.R. Parts 260 through 271.

5. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program.

6. The State of Maine received final authorization to implement its hazardous waste management program on May 6, 1988, with an effective date of May 20, 1988. See 53 Fed. Reg. 16264 (May 6, 1988). The Maine regulations are codified at Chapters 850-860 of the Maine Rules.

7. Between November 1994 and August 1995, Maine submitted a draft program revision application for many of the rules promulgated by the EPA between July 1, 1984, and June 30, 1990, and adopted by Maine in March 1994. Maine submitted its final application for these revisions on February 28, 1997, and received final authorization for the revisions on June 24, 1997, with an effective date of August 25, 1997 (62 Fed. Reg. 34007, June 24, 1997). On September 27, 2004, Maine submitted a final complete program revision application, seeking authorization for changes to its hazardous waste program that would allow it to meet EPA requirements. EPA granted Maine final authorization for the revisions on January 10, 2005, effective immediately (69 Fed. Reg. 64861-64865, November 9, 2004).

8. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), the Administrator may enforce the federally-approved Maine hazardous waste program by issuing orders requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA, Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, inter alia, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

9. Section 3008(a) of RCRA provides that upon finding that any person has violated or is violating any requirement of Subchapter III of RCRA, including violations in an authorized state, EPA may issue an order requiring compliance immediately or within a specified time and assessing a civil penalty for any past or current violation. Sections 3008(a) and (g) of RCRA provide that any person who violates any order or requirement of Subchapter III of RCRA shall be liable to the United States for a civil penalty in an amount of up to \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*, as well as 40 C.F.R. Part 19, the inflation-adjusted civil penalty for a violation of Subchapter III of RCRA is up to \$32,500 per day for each violation which occurred after March 15, 2004. *See* 69 Fed. Reg. 7121 (February 13, 2004).

#### **IV. EPCRA REGULATORY AND STATUTORY FRAMEWORK**

10. Under Section 312(a) of EPCRA and 40 C.F.R. §§ 370.20 and 370.25, any facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous

chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, and has any such chemicals present at the facility in quantities exceeding the minimum threshold level (MTL) set forth at 40 § C.F.R. 370.20, must prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II form) to the local emergency planning committee (LEPC), the state emergency response commission (SERC) and the local fire department with jurisdiction over the facility. The Tier I or Tier II form must be submitted annually on or before March 1 and is required to contain information with respect to the preceding calendar year.

11. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection and Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.* and EPA's Civil Monetary Penalty Inflation Adjustment Rule, promulgated at 40 C.F.R. Part 19, provides that any person who violates any requirement of Section 312 after March 15, 2004, shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each such violation.

#### **V. FINDINGS OF FACT**

12. Respondent is the Jackson Laboratory, Inc., a not-for-profit corporation organized and existing under the laws of the State of Maine, having its place of business at 600 Main Street, Bar Harbor, Maine 04609-1500.

13. Respondent is a “person,” as that term is defined at Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. At all times relevant to the allegations set out in this Complaint, Respondent has been and is the “owner” and/or “operator,” as defined at 40 C.F.R. § 260.10, of a laboratory located at 600

Main Street, Bar Harbor, Maine (the facility), which is a “facility,” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.2.

15. On or about January 24, 1986, Respondent notified EPA that it was operating as a Small Quantity Generator (SQG) of hazardous waste by submitting a Notification of Hazardous Waste Activity pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930. Such facilities must meet the regulatory requirements for SQGs set out at Chapters 850, 851, 852 and 855 of the Maine Rules.

16. Respondent generates wastes at the facility that are “hazardous waste” as defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. § 261.3, and Chapter 850, Section 3A(3) of the Maine Rules.

17. At all times relevant to the allegations set out in this Complaint, Respondent has been and is a “generator” of hazardous waste, as that term is defined by 40 C.F.R. § 260.10 and Chapter 851, Section 3C of the Maine Rules.

18. Respondent is thus subject to the federal and state standards applicable to generators of hazardous waste found at 40 C.F.R. Parts 262, 265 and 268, and Chapters 850, 851, 852 and 855 of the Maine Rules.

19. At all times relevant to the allegations cited herein, Respondent stored No. 2 fuel oil, propane, diesel fuel, unleaded gasoline, liquid nitrogen and rock salt at the facility, which are “hazardous chemicals” as defined under 29 C.F.R. § 1910.1200(c), in a quantity that exceeds the minimum threshold level (MTL) set out at 40 C.F.R. § 370.20(b)(4).

20. At all times relevant to the allegations cited herein, Respondent was required, pursuant to the Occupational Health and Safety Act (OSHA), to prepare or have available MSDSs for the No.2 fuel oil, propane, diesel fuel, unleaded gasoline, liquid nitrogen and rock salt stored on site.

21. On November 8-9, 2006, duly authorized representatives of EPA Region 1 conducted an inspection of the facility to determine compliance with RCRA and with EPCRA reporting requirements (the inspection). EPA evaluated conditions observed at the facility during the inspection and reviewed documents supplied by the Respondent, including (but not limited to) Uniform Hazardous Waste Manifests, Land Disposal Restriction notices, waste profile sheets, facility operating records, inspection records and MSDSs.

## **VI. VIOLATIONS**

### **A. RCRA**

Based on Complainant's inspection of the facility and a review of documentation contained in Complainant's and Respondent's files, EPA identified the following violations:

**COUNT I-Failure to design, construct, maintain, and operate a facility to prevent and to minimize the possibility of any threat to public health, safety, welfare, or the environment from a fire, explosion, or any other unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water**

22. Paragraphs 1 through 21 above are incorporated by reference as if fully set forth herein.

23. Pursuant to Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference the federal regulation set out at 40 C.F.R. § 264.31, facilities must be designed, constructed, maintained, and operated to prevent and to minimize the possibility of any threat to public health, safety, welfare or the environment from a fire, explosion, or any other unplanned sudden

or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or groundwater.

24. At the time of the inspection, Respondent stored peroxide-forming compounds at the facility without precautions to prevent accidental ignition or reaction. On two occasions (November 8 and November 9, 2006), Steven Larson, Respondent's Senior Manager of Environmental Health and Safety, stated to Drew Meyer, EPA inspector, that the Respondent's written policy ("TJL Chemical Hygiene Plan, Appendix, Handling Ether and other Peroxide-forming Chemicals in the Laboratory 11/06," hereinafter "the Policy") requires its employees to date all containers of peroxide-forming compounds when the compounds are first received as product, and again when the containers are first opened.<sup>1</sup> The Policy states, in pertinent part:

"...All containers of diethyl ether and other peroxide forming compounds...must be labeled with:

- a. the date received (mo/yr)
- b. the date opened first (mo/yr)
- c. the planned date of disposal (6 months from the date opened or 12 months from date of purchase). All unopened containers of peroxide forming chemicals are to be disposed of 12 months from date received. After this date, there is a risk of explosion when opening the container or when moving the container!"

The inspection team observed the following conditions:

(a) In Laboratory 3065, there was one, open, 1-litre bottle of ether (a peroxide-forming compound). The container was dated "10/8/03" and was not refrigerated. EPA inspectors could

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<sup>1</sup> Peroxide-forming compounds can form dangerous crystals that are extremely sensitive to friction. Once crystallized, these compounds become unstable and potentially explosive. Refrigerating peroxide-forming compounds increases shelf-life and limits the evaporation that promotes crystallization.

not determine if this date represented the date the container was received as product, or the date it was first opened.

(b) In Laboratory 3165, there were three containers marked “ether” located under a fume hood. None of the containers were dated to indicate when they were received or on what date they were opened.

(c) In Laboratory 3395, there was one, approximately 500-ml bottle marked “ethyl ether.” This bottle was partially full and was marked with a “10/03” date. Drew Meyer, EPA inspector, instructed Mr. Larson to prevent anyone from entering these laboratories until these containers were stabilized and shipped off-site. Mr. Larson contacted Clean Harbors during the inspection. Mr. Larson stated that he would immediately inspect the remaining laboratories for the presence of additional peroxide-forming containers. In a letter to Drew Meyer, EPA inspector, dated December 11, 2006, Mr. Larson stated that during his subsequent inspection, he found two additional peroxide-forming compound containers in “other laboratories.” All containers of hazardous waste described in this Paragraph were shipped off-site as hazardous waste by Clean Harbors on November 30, 2006.

25. By failing to design, construct, maintain, and operate the facility to prevent and to minimize the possibility of any threat to public health, safety, welfare, or the environment from a fire, explosion, or any other unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water, Respondent violated Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.31.

**Count II-Failure to conduct hazardous waste determinations**

26. Paragraphs 1 through 25 above are incorporated by reference as if fully set forth herein.

27. Pursuant to Chapter 851, Section 5 of the Maine Rules, a person who generates a solid waste must determine if that waste is a hazardous waste by determining if the waste is excluded from regulation under Chapter 850 of the Maine Rules or is a listed hazardous waste. If the waste is not excluded and not listed, the generator must determine whether the waste is identified by a characteristic according to the methods set forth in Chapter 850 of the Maine Rules, or by applying knowledge of the hazard characteristic in light of the materials or the processes used or according to an equivalent method approved under Chapter 850 of the Maine Rules.

28. At the time of the inspection, Respondent failed to make a hazardous waste determination for the following waste stream: in Laboratory 3145, Rich Piligian, EPA inspector, spoke to Linda Washburn, a laboratory technician employed by Respondent. Ms. Washburn stated that the laboratory was used to develop film. Ms. Washburn further stated that after developing film, it was her practice to dilute the waste fixer and developer<sup>2</sup> with water and then “dump it down the drain,” i.e., into a sink that discharges to the municipal sewer system. No waste determination was conducted prior to disposal. Ms. Washburn stated that this has been her practice in this laboratory since “around 1983.”

29. By failing to determine if a solid waste is a hazardous waste, Respondent violated Chapter 851, Section 5 of the Maine Rules.

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<sup>2</sup> Waste fixer and developer are typically hazardous wastes because they contain silver metal compounds (D011).

**Count III-Failure to determine if waste must be treated before it can be land disposed**

30. Paragraphs 1 through 29 above are incorporated by reference as if fully set forth herein.

31. Pursuant to Chapter 852, Section 10 of the Maine Rules, which references 40 C.F.R.

§ 268.7, a generator of hazardous waste must determine if the waste must be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards set out at 40 C.F.R. § 268.40.

32. After the inspection, the EPA inspection team reviewed a profile of a waste stream generated by Respondent. The profile was prepared by Clean Harbors. The profile states that, in addition to being a listed waste, the waste stream is characteristic for metals. The waste profile sets out the following Toxic Characteristic Leaching Procedure (TCLP) levels in this waste stream:

Arsenic (D004) -- 47.000 mg/L  
Cadmium (D006)--34.000 mg/L  
Total Chromium (D007) -- 3,000 mg/kg  
Hexavalant Chromium-- 2,100 mg/L  
Mercury (D009)--10.000 mg/L

Pursuant to the TCLP treatment standards set out at 40 C.F.R. §§ 268.40 and 268.48, these levels are all above the regulatory limits prohibiting land disposal. The Clean Harbors waste profile was reviewed and recertified as correct by Brian Fencher, Respondent's Senior Manager, Environmental Health and Safety Services, on March 29, 2006. Nonetheless, Respondent continued to identify this waste stream solely as a listed waste (F003) on its manifests at least until the date of the inspection.

33. By failing to determine if waste must be treated before it can be land disposed, Respondent violated Chapter 852, Section 10 of the Maine Rules, which references 40 C.F.R. § 268.7.

**Count IV-Failure to mark containers of hazardous waste with the words “hazardous waste.”**

34. Paragraphs 1 through 33 above are incorporated by reference as if fully set forth herein.

35. Pursuant to Chapter 851, Section 8C of the Maine Rules, a generator must mark containers of hazardous waste in satellite accumulation areas with the words “hazardous waste.”

36. At the time of the inspection, containers of hazardous waste in satellite accumulation areas were not marked with the words “hazardous waste.” The inspection team observed the following conditions:

(a) In satellite storage areas located in Laboratory 3145 in Building 33, there was one, approximately two and one-half gallon, unlabeled container in a cabinet located under a fume hood. Drew Meyer, EPA inspector, was told by a laboratory associate that the container contained waste phenol/bouins stain managed as hazardous waste (D001);

(b) In Building 53’s satellite storage area in Laboratory 53-2555, there was one, full, approximately two and one-half gallon safety container that was not marked with any information. Mr. Larson stated that the container held “PFA” and bouins waste (D001);

(c) In the satellite storage area in Laboratory 3375, there was one, two and one-half gallon safety can. Drew Meyer, EPA inspector, lifted the can, which appeared to be almost full. This container was unlabeled. Mr. Fencher stated that it should have been labeled as bouins waste (D001), and that bouins waste is managed by the Respondent as a hazardous waste.

(d) In the satellite storage area in Building 22, Laboratory 4305, there was one, approximately two-gallon safety container marked only with the words “chloroform, phenol.”

(e) In the satellite storage area in Building 22, Laboratory 4395, there was one, one liter container marked only with the words “bouins waste” (D001); and one, one liter container marked only as “formaldehyde waste” (D001).

(f) In the satellite storage area in Building 22, Laboratory 3295, there was one, four liter container marked only with the words “acetonitrile waste” (D001).

37. By failing to mark containers of hazardous waste in satellite storage areas with the words “hazardous waste,” Respondent violated Chapter 851, Section 8C of the Maine Rules.

**Count V-Failure to ensure that all employees with hazardous waste management responsibilities are adequately trained in hazardous waste management**

38. Paragraphs 1 through 37 above are incorporated by reference as if fully set forth herein.

39. Pursuant to Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16, facility personnel with hazardous waste management responsibilities must successfully complete a training program that teaches them to perform their duties in a way that ensures the facility’s compliance with hazardous waste management regulatory requirements. In relevant part, facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility’s compliance with RCRA requirements. The training program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. At a minimum, the training program must be designed to ensure that facility personnel are able to respond

effectively to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems. Facility personnel must successfully complete the training program within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Facility personnel must take part in an annual review of the initial training. The facility owner/operator must maintain records that document that training has been given to, and completed by, relevant facility personnel.

40. At the time of the inspection, the following employees of Respondent who manage hazardous waste had not received adequate training in 2004, 2005 and 2006:

(a) Respondent maintained no RCRA training records for Stephen Larson, Senior Manager for Environmental Health and Safety. Mr. Larson stated to Drew Meyer, EPA inspector, that he had taught himself enough RCRA to know more than what is required by the regulations. At the time of the inspection, Mr. Larson had been employed in his position for approximately 18 months;

(b) Brian Fencher, Senior Manager, Environmental Health and Safety Services, had completed an annual RCRA refresher training course on June 3, 2005. However, during the inspection, Mr. Fencher stated that this refresher training had been, in fact, his initial RCRA training course. Mr. Fencher stated that he had performed extensive hazardous waste management duties at the facility since 1998. The inspection team requested copies of any internal training provided to Mr. Fencher. The Respondent was unable to locate any such documentation;

(c) There were no training records for Chris Rock, Safety Specialist;

(d) There were no training records for Kristopher LeVasseur, Safety Specialist.

41. By failing to ensure that all employees with hazardous waste management responsibilities were adequately trained in hazardous waste management, Respondent violated Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16.

**Count VI-Failure to maintain a complete personnel training plan**

42. Paragraphs 1 through 41 above are incorporated by reference as if fully set forth herein.

43. Pursuant to Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16(d), a facility must have a personnel training plan which contains certain elements, including a written description of the introductory and annual update training given to each person having hazardous waste management duties, and a complete description of the hazardous waste management responsibilities for each position.

44. At the time of the inspection, Respondent's personnel training plan was deficient in the following areas: (a) the plan did not include a written description of the introductory and annual update training to be given to each employee position with hazardous waste management duties, and; (b) the plan did not set out each employee's hazardous waste management duties.

45. By failing to maintain an adequate facility personnel training plan, Respondent violated Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16(d).

**Count VII-Failure to maintain a complete hazardous waste contingency plan**

46. Paragraphs 1 through 45 above are incorporated by reference as if fully set forth herein.

47. Pursuant to Chapter 851, Section 8B(5) of the Maine Rules, each owner or operator of a hazardous waste facility must have a contingency plan for the facility meeting the requirements of 40 C.F.R. § 264.52. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water. The plan must also describe actions facility personnel must take in response to emergency situations.

Specifically, the plan must describe arrangements agreed to by local emergency responders and hospitals to coordinate emergency services. In addition, the plan must: list the names, addresses, and phone numbers of all persons qualified to act as an emergency coordinator for the facility; include a list of all emergency equipment at the facility including the location, description and capabilities of the equipment; and the information in the plan must be kept up-to-date.

48. At the time of the inspection, Respondent's contingency plan was deficient in the following areas: (a) the contingency plan did not list the current names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinators. The plan provided to the inspection team listed Joel A. Farley as the Manager of Environmental Health and Safety, a position that had been held by Stephen Larson for more than 18 months prior to the inspection. The plan listed Bud Applegate as the Radiation Safety Officer. Mr. Applegate left Respondent's employment in 2004. Mr. Brian Fencher now holds this position; (b) the plan provided a list of resources and equipment available for use in the event of an incident. However, the plan did not adequately describe the uses of the equipment or adequately describe the equipment's location; and (c) the plan's maps do not set out the facility's current lay-out as part of an evacuation plan.

49. Respondent's failure to have a contingency plan for the facility meeting the requirements of 40 C.F.R. § 264.52 constitutes a violation of Chapter 851, Section 8B(5) of the Maine Rules.

**Count VIII-Failure to conduct and document daily inspections at all satellite storage areas and/or failure to document inspections**

50. Paragraphs 1 through 49 above are incorporated by reference as if fully set forth herein.

51. Pursuant to Chapter 851, Section 13D of the Maine Rules, a generator must conduct daily inspections during regular business days of all containers of hazardous waste including containers at satellite accumulation areas, and record the conclusions or results in a log book kept at the facility. The log book must also contain the name of the person conducting the inspection and the date and time of the inspection.

52. At the time of the inspection, EPA inspectors observed that the following laboratories had containers of hazardous waste stored in areas identified by Brian Fencher and Stephen Larson as satellite storage areas. These satellite storage areas either had no up-to-date daily inspection logs or no inspection logs at all:

(a) Laboratory 3145 - the last inspection log entry was dated July 28, 2006, and initialed "MJC";

(b) Laboratory 3165-the last inspection log entry was dated November 1, 2006, and signed by "M. Osborne";

(c) Laboratory 53-2555-there were no inspection logs for this laboratory;

(d) Laboratory 4395- there were no inspection log entries from July 7, 2006, until October 31, 2006. The last recorded inspection was dated November 2, 2006, signed by "Travis Alley"; and,

(e) Laboratory 4325- there were no inspection logs for this laboratory.

53. Respondent's failure to conduct daily inspections of hazardous waste containers including containers at satellite accumulation areas, and/or record the conclusions or results in a log book kept at the facility, constitutes violations of Chapter 851, Section 13D of the Maine Rules.

**Count IX-Failure to file a subsequent application (notification) of regulated waste activity to reflect its current operating status**

54. Paragraphs 1 through 53 above are incorporated by reference as if fully set forth herein.

55. Pursuant to Chapter 851, Section 6C of the Maine Rules, a generator of hazardous waste is required to file a subsequent notification form if its generator status has changed.

56. On or about January 24, 1986, Respondent notified EPA that it was operating as a SQG, as that term is defined at Chapter 850, Section 3(A)5(a) and (b), by submitting a Notification of Hazardous Waste Activity pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.<sup>3</sup> However, at the time of the inspection, Brian Fencher and Stephen Larson stated that Respondent was

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<sup>3</sup> Chapter 850, Section 3(A)5(a) of the Maine Rules states in pertinent part: "Special requirements for hazardous waste generated by small quantity generators: (a) Except as otherwise provided in this section, if a person determines whether the waste he generates is hazardous under Chapter 851, Section 5 and generates, in a calendar month, a total of less than 100 kilograms (220.46 lbs.) of hazardous wastes, those wastes are not subject to regulation under 38 M.R.S.A., Section 1301, et seq. and related rules..." Chapter 850, Section 3(A)5(b) of the Maine Rules states, in pertinent part, that if a facility violates SQG status "...by storing more than 600 kilograms or acutely hazardous wastes in quantities greater than set forth in paragraph (c) of this section, all of those accumulated wastes are subject to regulation under 38 M.R.S.A.,

operating as a Large Quantity Generator (LQG). A LQG is defined as any facility that generates more than one hundred kilograms per month or exceeds 600 kilograms of hazardous waste stored on site. At the time of the inspection, the EPA inspection team observed that Jackson Lab was storing over 770 kilograms of hazardous waste in its main HWSA. An additional 350 kilograms of hazardous waste was stored in Respondent's satellite accumulation areas. Thus, at the time of the inspection, Respondent was operating as a LQG. As of August 5, 2008, Respondent had not notified EPA or the Maine Department of Environmental Protection (MEDEP) about a change in its generator status from SQG to LQG.

57. Respondent's failure to file a notification form indicating a change in its generator status constitutes a violation of Chapter 851, Section 6C of the Maine Rules.

**Count X-Failure to file an annual report with MEDEP**

58. Paragraphs 1 through 57 above are incorporated by reference as if fully set forth herein.

59. Pursuant to Chapter 851, Section 9F of Maine Rules, a LQG must file an annual report summarizing its hazardous waste activities. This report must be sent to MEDEP no later than March 1 of each year, for the previous calendar year's hazardous waste activity.

60. On May 30, 2008, MEDEP notified EPA that Respondent had not submitted its annual report for calendar year 2007. As of August 5, 2008, Respondent still had not submitted its annual report to MEDEP for calendar year 2007.

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Section 1301 et seq. and related rules..."

61. Respondent's failure to file an annual report with MEDEP summarizing its hazardous waste activities for calendar year 2007 constitutes a violation of Chapter 851, Section 9F of Maine Rules.

**B. EPCRA**

**Count XI-Failure to prepare and submit an emergency and hazardous chemical inventory or Tier II form**

62. Paragraphs 1 through 61 above are incorporated by reference as if fully set forth herein.

63. During calendar year 2006, Respondent stored No. 2 fuel oil, propane, diesel fuel, unleaded gasoline, liquid nitrogen and rock salt at the facility in quantities that exceeded the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.20(b)(4).

64. Respondent was required to prepare and submit an emergency and hazardous chemical inventory or Tier II form to the SERC, LEPC and the local fire department in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for calendar year 2006 on or before March 1, 2007.

65. Respondent failed to prepare and submit a Tier II form by March 1, 2007 to the SERC, LEPC and the local fire department, in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.25.

66. Respondent is, therefore, subject to an assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19.

**Proposed RCRA Civil Penalty**

67. The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty to be assessed, Section 3008(a)(3) of RCRA 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, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "RCRA Civil Penalty Policy," dated June 2003, a copy of which is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. Based on the nature, circumstances, extent and gravity of the above-cited violations, Complainant proposes that Respondent be assessed a civil penalty in the amount of one hundred eighty-nine thousand five hundred eighty-one dollars (**\$189,581**) for the RCRA violations alleged in this Complaint. (See Attachment I to this Complaint explaining the reasoning for this penalty). The provisions violated and the corresponding penalties are as follows:

PROVISION	REQUIREMENT	PENALTY (\$)
1. Ch. 855, Section 8B(5)	Failure to minimize the possibility of any threat to public health, safety, welfare or the environment	\$ 28,690
2. Ch. 851, Section 5	Failure to adequately determine if a solid waste is a hazardous waste	\$ 20,954
3. 40 C.F.R § 268.7	Failure to comply with the Land Disposal Restriction (LDR) requirements	\$ 8,381

4. Ch. 851, Section 8C	Failure to mark containers of hazardous waste with the words "hazardous waste"	\$ 5,158
5. Ch. 851, Section 8B(5)	Failure to ensure that all employees with hazardous waste management responsibilities are trained	\$ 79,654
6. Ch. 851, Section 8B(5)	Failure to maintain a complete personnel training plan	\$ 22,566
7. Ch. 855, Section 8B(5)	Failure to maintain a complete hazardous waste contingency plan	\$ 8,381
8. Ch. 851, Section 13(D)	Failure to conduct and document daily inspections at all satellite storage areas	\$ 2,258
9. Ch. 851, Section 6(C)	Failure to file notification	\$ 8,381
10. Ch. 851, Section 9(F)	Failure to file an annual report with MEDEP	<u>\$ 5,158</u>

**TOTAL RCRA PENALTY AMOUNT:           \$189,581**

**Proposed EPCRA Civil Penalty**

68. Paragraphs 1 through 67 above are incorporated by reference as if fully set forth herein.

69. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection and Improvement Act of 1996, 31 U.S.C. § 3701 et seq. and EPA's Civil Monetary Penalty Inflation Adjustment Rule, set forth at 40 C.F.R. Part 19, provides that any person who violates any requirement of Section 312 after March 15, 2004, shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each such violation.

70. Failure to report in a timely manner, as required by Section 312, may deprive the community of its right to know about chemicals used or stored near or in the neighborhood that may affect public health and the environment, and may prevent comprehensive planning by federal, state and local authorities to properly prepare for accidental chemical releases.

71. The proposed civil penalty has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). For purposes of determining the amount of any penalty to be assessed, EPA considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Interim Final Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act" (dated September 30, 1999, as amended March 3, 2005 and June 5, 2006) (ERP), a copy of which is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

72. Pursuant to Part V of the ERP, the first stage of calculating a penalty requires the determination of the "extent" level of the violation and the second stage concerns the "gravity" level of the violation. The "extent" of the violation alleged in Count XI was determined to be "Level 1" because Respondent failed to submit the Tier II chemical inventory form to the SERC,

LEPC or fire department within 30 calendar days of the reporting deadline. The “gravity” of the violation alleged in Count I was determined to be “Level A” because the amount of one of the hazardous chemicals not reported, No. 2 fuel oil (604,125 pounds) was greater than ten times the reporting threshold.

73. Under the ERP, EPA has discretion to select an amount within the range specified in the appropriate matrix box. Respondent’s failure to submit the Tier II form was determined to fall in the mid-point of the Level 1-A matrix box based on the circumstances of the violation, resulting in a penalty of \$28,340. Pursuant to Section VIII.F. of the ERP, an adjustment to the base penalty for Count XI was made, based on the size of Respondent’s business, resulting in a 15% reduction of the base penalty to \$24,089.

74. After consideration of the Respondent's failure to voluntarily disclose the violation, its lack of a history of prior violations, degree of culpability, and economic benefit, the Complainant proposes no further adjustments to the gravity-based penalty amount for the Section 312 violation.

75. The proposed penalty as stated in this Complaint was developed based on the best information available to the Agency at this time and may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

76. Based upon the violation cited in this Complaint, and taking into account the nature, circumstances and gravity of this violation, the Complainant proposes that Respondent be

assessed a civil penalty in the amount of **\$24,089** for the EPCRA violation alleged in this Complaint.

TOTAL RCRA PENALTY AMOUNT:	\$189,581
TOTAL EPCRA PENALTY AMOUNT:	<u>24,089</u>
<b>TOTAL PENALTY PROPOSED:</b>	<b>\$213,670</b>

77. Payment may be made by a cashier's or certified check, payable to the Treasurer, United States of America. Respondent should note on the check the RCRA and EPCRA docket numbers of this Complaint: RCRA-01-2008-0074 and EPCRA- 01-2008-0091. The check should be forwarded to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Regional Hearing Clerk  
United States Environmental Protection Agency  
One Congress Street, Suite 1100 (RAA)  
Boston, Massachusetts 02114-2023

and

Joshua Secunda  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (SEL)  
Boston, Massachusetts 02114-2023.

## **VII. RCRA ORDER**

78. Based on the foregoing findings, Respondent is hereby ORDERED to comply with the following requirements:

- a. Immediately upon receipt of this Complaint, Respondent shall take precautions to design, construct, maintain, and operate its facility to prevent and to minimize the possibility of any threat to public health, safety, welfare, or the environment from a fire, explosion, or any other unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water, pursuant to Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.31. Specifically, Respondent shall ensure that all laboratories at its facility are in compliance with the special requirements for the storage of ignitable or reactive hazardous wastes, in particular, peroxide-forming compounds.
- b. Immediately upon receipt of this Complaint, Respondent shall determine if its solid waste is a hazardous waste by determining if the waste is excluded from regulation under Chapter 850 of the Maine Rules or is a listed hazardous waste, pursuant to Chapter 850 of the Maine Rules, or by applying knowledge of the hazard characteristic in light of the materials or the processes used or according to an equivalent method approved under Chapter 850 of the Maine Rules.
- c. Immediately upon receipt of this Complaint, Respondent shall determine if hazardous waste must be treated before it can be land disposed, pursuant to Chapter 852, Section 10 of the Maine Rules, which references 40 C.F.R. § 268.7.

- d. Immediately upon receipt of this Complaint, Respondent shall mark all containers of hazardous waste with the words “hazardous waste” in accordance with Chapter 851, Section 8C of the Maine Rules.
- e. Within thirty (30) days of receipt of this Complaint, Respondent shall cause facility personnel with hazardous waste management responsibilities to successfully complete a training program that teaches them to perform their duties in a way that ensures the facility’s compliance with hazardous waste management regulatory requirements, in accordance with Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference the requirements of 40 C.F.R. § 264.16.
- f. Within thirty (30) days of receipt of this Complaint, Respondent shall prepare a personnel training plan which contains certain elements, including a written description of the introductory and annual update training given to each person having hazardous waste management duties, and a complete description of the hazardous waste management responsibilities for each position, in accordance with Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference the requirements of 40 C.F.R. § 264.16(d).
- g. Within thirty (30) days of receipt of this Complaint, Respondent shall prepare and maintain a complete hazardous waste contingency plan, in accordance with Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference the requirements of 40 C.F.R. § 264.52.
- h. Immediately upon receipt of this Complaint, Respondent shall conduct daily inspections during regular business days of all containers of hazardous waste including containers at satellite

accumulation areas, and record the conclusions or results in a log book kept at the facility, in accordance with Chapter 851, Section 13D of the Maine Rules.

i. Within ten (10) days of receipt of this Complaint, Respondent shall file a notification form with MEDEP indicating a change in its generator status, in accordance with Chapter 851, Section 6C of the Maine Rules.

j. Within ten (10) days of receipt of this Complaint, Respondent shall file an annual report with MEDEP summarizing its hazardous waste activities for calendar year 2007, in accordance with Chapter 851, Section 9F of Maine Rules.

k. Within forty-five (45) days of receipt of this Complaint, Respondent shall submit to EPA written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation such as a training plan or revised contingency plan) or noncompliance with the requirements of this Order. The written confirmation also should contain information regarding the pounds of hazardous waste removed from the facility and the cost of coming into compliance with the requirements of this Order. Any notice of noncompliance required under this Paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance.

The information requested in this RCRA Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 et seq.

Respondent shall submit the above required information and notices to:

Andrew Meyer  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100

Boston, Massachusetts 02114-2023  
ATTN: RCRA Compliance Unit (SER)

If Respondent fails to comply with the requirements of this Complaint within the time specified, Section 3008(c) of RCRA provides for further enforcement action in which EPA may seek the imposition of additional penalties of up to \$32,500 for each day of continued noncompliance. (This Complaint shall become effective immediately upon receipt by Respondent).

**VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER**

79. As provided by Section 3008(b) of RCRA and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint, or on the appropriateness of the proposed penalty or compliance order. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint. In its answer, Respondent may contest any material fact contained in the Complaint. The answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondent intends to place at issue; and, (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failures of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation.

80. Under the Consolidated Rules of Practice, if Respondent elects to resolve this proceeding by paying the \$213,670 civil penalty proposed in this Complaint, it need not file an Answer.

Respondent either may pay the proposed civil penalty in full within thirty (30) days of receipt of this Complaint or may pay the proposed civil penalty in full within sixty (60) days of receipt of this Complaint if Respondent notifies the Regional Hearing Clerk in writing that it intends to pay the proposed penalty.

81. Payment of the civil penalty alone does not satisfy Respondent's legal obligation to comply with RCRA or file complete and accurate emergency and hazardous chemical inventory forms (Tier I or Tier II forms) as required by EPCRA. Failure or refusal to file such forms may subject Respondent to additional civil penalties of up to \$32,500 per day of violation.

#### **IX. DEFAULT ORDER**

82. If Respondent fails to file a timely answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

#### **X. SETTLEMENT CONFERENCE**

83. Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to

the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region I. The issuance of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, or discretion included in the Agreement.

84. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Joshua Secunda, Senior Enforcement Counsel, who has been designated to represent Complainant and is authorized to receive service in this action, at the address cited above in Paragraph 77 of this

Complaint or at (617) 918-1736.

  
Joel Blumstein, Enforcement Manager  
Office of Environmental Stewardship  
EPA, Region 1

9/25/08  
Date

EPA DOCKET NOS.  
RCRA-1-2002-0020  
EPCRA- 01-2008-0091

**CERTIFICATE OF SERVICE**

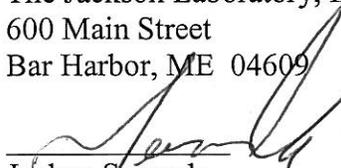
I hereby certify that the foregoing Complaint, Compliance Order and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and one copy, hand-delivered:

Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. EPA, Region I  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

Copy of Complaint and 40 C.F.R. Part 22, first class mail, return receipt requested:

Richard P. Woychik, Ph.D.  
President and Chief Executive Officer  
The Jackson Laboratory, Inc.  
600 Main Street  
Bar Harbor, ME 04609

  
Joshua Secunda  
Senior Enforcement Counsel (SPP)  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100  
Boston, MA 02114-2023  
Tel (617) 918-1736

Date

9/26/08

## ATTACHMENT I

In the Matter of: The Jackson Laboratory, Inc.  
Administrative Complaint  
EPA Docket Nos.:  
RCRA- 01-2008-0074  
EPCRA- 01-2008-0091

The following represents the penalty calculation and justification addressing violations by Jackson Laboratory, Inc. of Chapter 13 of Title 38 of the Maine Revised Statutes and the Maine Hazardous Waste Management Regulations promulgated thereunder at Chapter 800 et seq.

Gravity-based and multiple or multi-day penalties are being proposed for the violations in accordance with the RCRA Civil Penalty Policy, dated June 23, 2003, (RCPP) and the Civil Monetary Adjustment Rule, effective March 15, 2004. Adjustment factors examined by EPA in determining the amount of the proposed penalty include: economic benefit of noncompliance; history of non-compliance; the degree of willfulness or negligence; good faith efforts; and other unique factors. Adjustments for some of these factors have been deemed appropriate as discussed below. Economic benefit estimates are based upon observations made by inspectors from the U.S. Environmental Protection Agency during an EPA compliance evaluation inspection (CEI) conducted at Respondent's facility on November 8-9, 2006.

The following violations have been documented and included in the complaint to be issued pursuant to Section 3008(a) of RCRA 42 U.S.C. § 6928(a) against Respondent:

1. Failure to design, construct, maintain, and operate a facility to prevent and to minimize the possibility of any threat to public health, safety, welfare, or the environment from a fire, explosion, or any other unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water

Provision Violated: Chapter 851, Section 8B(5) of the Maine Hazardous Waste Management Rules (Maine Rules), which incorporates by reference the federal regulation set out at 40 C.F.R. § 264.31.

The Jackson Laboratory (JL) failed to minimize the threat of explosion of hazardous waste. During the inspection, Steven Larson, Senior Manager of Environmental Health and Safety Services, stated that JL's written policy requires employees to date all containers of peroxide-forming compounds when received and first opened; to keep unopened peroxide-forming compounds for no longer than 1-year; and, dispose of them no more than six months after opening the container. The inspection team observed the following containers of ether, a peroxide-forming compound: one, open 1-liter bottle of ether dated 10/8/03 and not refrigerated; three undated containers of ether under a fume hood; and, one approximately 500-ml bottle of ethyl ether that was partially full and marked with a 10/03 date. Shortly after the inspection, all these containers were shipped off-site as hazardous waste.

The potential for harm was major. The improper storage of potentially explosive and unstable peroxide-forming chemicals/waste is a potential threat to the environment and to personnel working in and around the laboratories where these chemicals were stored. Failure to refrigerate peroxide-forming chemicals accelerates the rate at which they become unstable, shock-sensitive and potentially explosive. The explosive power of such wastes potentially equals several sticks of dynamite. JL drafted an internal policy to manage these hazardous wastes responsibly. However, JL failed to follow its own policy, thereby creating a major potential for harm to human health and the environment. Harm to the regulatory program was significant. RCRA created a regulatory program to protect human health and the environment from the dangers posed by hazardous waste by requiring that proper waste handling procedures be used. JL's failure to comply with such basic RCRA requirements contributed to the violation set out here. JL operates fifty laboratories at its facility, but improper storage of peroxide-forming chemicals was observed in only three of these laboratories. Nonetheless, in all cases where peroxide-forming chemical containers were observed, they were improperly stored. The extent of regulatory deviation posed by this violation is therefore moderate.

Penalty Amount: \$22,566

Multiple/Multi-day Assessment: The inspection team observed three instances where peroxide-forming compounds were mismanaged. In accordance with the RCRA Civil Penalty Policy (RCPP), EPA is treating multiple violations as multi-day violations because the violations are similar in nature. The full gravity-based penalty is assessed for the first instance of noncompliance.

First Violation:	\$22,566
Second and third violation (2) (\$3,062):	<u>6,124</u>
	<b>\$28,690</b>

2. Failure to adequately determine if a solid waste is a hazardous waste

Provision Violated: Chapter 851, Section 5 of the Maine Rules.

Laboratory 3145 was used to develop film by Linda Washburn. Ms. Washburn stated that she habitually dilutes the waste fixer and developer with water and dumps it down the drain. One of the most important steps in complying with hazardous waste regulations is conducting hazardous waste determinations. JL failed to conduct a hazardous waste determination on its photographic waste. By discharging this waste stream to a sewer, JL potentially loaded the wastewater treatment facility with concentrations of metals that cannot generally be treated by such a system. This practice posed a substantial potential for harm to human health and the environment. This violation also posed substantial harm to the regulatory program because the RCRA regulatory program relies on hazardous waste generators to fully evaluate their waste streams before decisions are made about how to properly manage them. The amount of waste improperly discharged was small, however. Therefore, this violation presents a minor extent of deviation from the regulatory requirement.

Penalty Amount: \$16,763

History of Noncompliance: JL has been cited for improperly discharging photo processing wastes twice before by the Maine Department of Environmental Protection (MEDEP): in 2003 and 2005. Therefore, this is a repeat violation. The penalty has been adjusted upward by 25% as permitted by the RCPP.

$\$16,763 \times 1.25 = \$20,954$

3. Failure to comply with the Land Disposal Restriction (LDR) requirements

Provision Violated: Chapter 852, Section 10 of the Maine Rules, which references 40 C.F.R. § 268.7.

Generators are required to determine if hazardous waste must be further treated before it can be land disposed. The inspection team reviewed a waste profile document prepared by Clean Harbors (R22542) that set out the toxicity characteristic leaching procedure results (TCLP) for a waste stream that is characterized by JL as F003 hazardous waste. The results of TCLP testing, as documented by the Clean Harbors profile, reveal that the waste stream is characteristic for metals. Yet, the waste stream has consistently been shipped by JL, via Clean Harbors, as F003 without any additional waste codes indicating its metal content. By not identifying the regulated metals contained in this waste on the LDR notification, JL increased the likelihood that this waste stream would not be effectively treated by the treatment, storage and disposal facility (TSD). This waste stream is the largest generated by JL. However, the amount of waste generated is still relatively small. The potential for harm is, therefore, moderate. JL significantly deviated from the LDR requirements by not fully identifying the contents on the LDR notification form for this waste stream. However, the inspection team observed that JL was generally conducting adequate hazardous waste determinations on most waste streams. The violation thus presents a moderate extent of deviation from the regulatory requirement.

Penalty Amount: **\$8,381**

4. Failure to mark containers of hazardous waste with the words “hazardous waste”

Provision Violated: Chapter 851, Section 8C of the Maine Rules

JL failed to label containers of hazardous waste with the words “hazardous waste.” Failure to label containers of hazardous waste poses significant harm to human health and the environment. Containers that are not labeled with the words “hazardous waste” may be improperly managed. In addition, in the event of an emergency, JL employees and/or emergency responders would be unable to determine if containers held hazardous waste. This presents a moderate potential for harm to the environment. In addition, if containers are not labeled with the words “hazardous waste” inspectors cannot determine whether the containers should be managed under RCRA regulations. This violation represents a minor deviation from the regulatory requirement. Only six containers out of the more

than two-hundred containers observed on-site were not labeled with the words "hazardous waste."

(c) Penalty Amount: **\$5,158**

5. Failure to ensure that all employees with hazardous waste management responsibilities are adequately trained in hazardous waste management

Provision Violated: Chapter 851, Section 8B(5) of the Maine Rules, which incorporates by reference 40 C.F.R. § 264.16.

JL had no RCRA training records on file for Stephen Larson, Senior Manager, Environmental Health and Safety; Chris Rock, Safety Specialist; and Kristopher LeVasseur, Safety Specialist. Brian Fencher, Safety Specialist, last completed an annual refresher training course on June 3, 2005. The training of personnel is an essential part of an adequate hazardous waste management program. Proper training ensures that employees know how to handle hazardous waste safely. Improper handling of hazardous wastes increases the likelihood of their release and worker exposure to hazardous wastes. Respondent's hazardous waste management practices were inadequate as documented by the violations cited above. For instance, the violations set out here concerning mismanagement of peroxide-forming waste are probably the result of ignorance of proper procedures for managing such waste. This violation presents a major potential for harm to human health and the environment. The violation also presents a major extent of deviation from the requirements of the RCRA regulatory program. JL attempted to comply with the training requirements by having RCRA training taught by its own Environmental Health and Safety Office staff. This strategy requires that in-house staff providing the training be properly trained themselves. This has not been the case at JL. In-house trainers must themselves be trained by an outside trainer at least annually. Annual outside training for staff members teaching the course helps ensure that trainers are up-to-date with state and federal environmental regulations; regulations that change regularly.

Penalty Amount: \$29,145

Multiple/Multi-day Assessment: JL failed to properly train personnel on at least 12 occasions during the years 2004 through 2006. The full gravity based penalty is assessed for the first instance of noncompliance. Consistent with the RCPP, EPA is assessing multi-day penalties for the 2<sup>nd</sup> through 12<sup>th</sup> violations, because the violations are so similar in nature.

First violation:	\$29,145
2nd through 12th violation (11) (\$3,869) =	<u>42,559</u>
	\$ 71,704

Economic Benefit: JL avoided the cost of providing off-site training. The economic benefit has been estimated at \$7,950, as calculated by the EPA "BEN" model.

6. Failure to maintain a complete personnel training plan

Provision Violated: Chapter 851, Section 8B(5) of the Maine Rules, which references federal regulations at 40 C.F.R. § 264.16.

The personnel training plan did not include a description of the training to be provided to the in-house trainers, and the plan did not include a written description of the introductory and annual update training to be given to each employee with hazardous waste management duties. An adequate training plan helps ensure that such training is carried out properly. The violations set out here concerning mismanagement of peroxide-forming waste are probably the result of ignorance of the proper procedures for managing hazardous waste due to insufficient training. This violation poses a major potential for harm to the environment. As a large quantity generator, JL's training plan did not adequately describe all employee positions subject to hazardous waste training requirements, and did not set out how this training would be conducted. Nonetheless, JL had a hazardous waste training plan that described how some employees would be trained and the nature of the training. This violation represents a moderate extent of deviation from the regulatory requirement.

Penalty Amount: **\$22,566**

7. Failure to maintain a complete hazardous waste contingency plan

Provision Violated: Chapter 851, Section 8B(5) of the Maine Rules, which references 40 C.F.R. § 264.52

The reviewed contingency plan did not list the current names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinators. The plan provided to the inspection team listed Joel A. Farley as Manager of Environmental Health and Safety, a job held by Stephen Larson for more than 18 months prior to the inspection. The plan listed Bud Applegate as the Radiation Safety Officer. Mr. Applegate left JL in 2004. The plan provided a list of resources for use in the event of an emergency but it did not adequately describe the capabilities or location of this equipment. Finally, plan evacuation maps did not reflect the current facility lay-out. Information on how to identify and reach emergency contacts is an essential feature of a contingency plan. Failure to set out current evacuation routes for all buildings creates a serious potential for harm to employees and emergency responders. A contingency plan must be up-to-date, accurate and complete to serve its function in the event of an emergency. Certain aspects of the JL contingency plan were adequate, however. This violation therefore posed a moderate potential for harm to human health and the environment. Failure to maintain a complete contingency plan poses significant harm to the regulatory program because it prevents regulators from determining the adequacy of preparedness at the facility. Nonetheless, the Respondent maintained certain elements of a contingency plan. This violation presents a moderate extent of deviation from the regulatory requirement.

Penalty Amount: **\$8,381**

8. Failure to conduct and document daily inspections at all satellite storage areas

Provision Violated: Chapter 851, Section 13D of the Maine Rules

Respondent stored containers of hazardous waste in the following laboratories without maintaining daily inspection logs, as follows: Laboratory 3145; Laboratory 3165; Laboratory 53-2555; and, Laboratory 4325.

A majority of JL's hazardous waste storage areas was being inspected and the inspections were documented. However, JL either did not inspect the areas listed above and/or failed to document such inspections. Such a failure may contribute to an increased potential for improper management of these containers. This presents a moderate potential for harm to the environment. The JL facility operates 50 laboratories. Only 5 laboratories were non-compliant. Therefore, the violation presents a minor deviation from the regulatory requirement.

Penalty Amount: **\$2,258**

9. Failure to file a subsequent application (notification) of regulated waste activity to reflect its current operating status

Provision Violated: Chapter 851, Section 6C of the Maine Rules.

A generator of hazardous waste is required to file a new notification form if its generator status changes. The only notification form submitted to MEDEP by JL was dated January 21, 1986, and identified JL as a Small Quantity Generator (SQG). At the time of the inspection, Brian Fencher and Stephen Larson identified JL as a Large Quantity Generator (LQG). A LQG is defined as any facility that generates more than one hundred kilograms per month or exceeds 600 kilograms of hazardous waste stored on site. At the time of the inspection, the EPA inspection team observed that JL was storing over 770 kilograms of hazardous waste in its main HWSA. An additional 350 kilograms of hazardous waste were stored in JL's satellite accumulation areas. Thus, at the time of the inspection, Respondent was operating as a LQG. As of August 2008, JL had not notified MEDEP about a change in its generator status. LQGs must comply with significantly stricter operating standards than SQGs. These more stringent regulations are designed to protect human health and the environment from the hazards posed by significant amounts of hazardous waste generated by a LQG. The potential for harm to human health and the environment is moderate because JL operated its facility in conformance with certain LQG requirements. If a facility misstates its status, inspectors cannot know if it is generating significant quantities of hazardous waste, and what set of regulations is applicable to the facility. By not updating its generator status, JL was listed in the RCRA database as a SQG, which significantly harmed the regulatory program. Because JL operated its facility in conformance with certain LQG requirements despite its original erroneous notification, and during certain years in which it generated smaller

amounts of hazardous waste, JL was, in fact, operating as a SQG, the extent of deviation from the regulatory requirement is moderate.

Penalty Amount: **\$8,381**

10. Failure to file an annual report with MEDEP

Provision Violated: Chapter 851, Section 9F of the Maine Rules.

An annual report must be sent to MEDEP no later than March 1 of each year, for the previous calendar year's hazardous waste activity. On May 30, 2008, the EPA was informed by MEDEP that JL had not submitted its annual report for calendar year 2007. Annual reports provide a snapshot of hazardous waste activities at a LQG. Nonetheless, during the inspection, it was observed that JL was meeting certain elements required of a LQG. The potential for harm to the environment is, therefore, moderate. MEDEP and EPA rely on annual reports as an information tool. Annual reports allow inspectors to quickly summarize the types and quantities of wastes generated by a facility, and provide information that can be used to plan inspections. However, the extent of deviation is minor. JL filed timely annual reports for two out of the last three years.

Penalty Amount: **\$5,158**

<u>PROVISION</u>	<u>REQUIREMENT</u>	<u>PENALTY</u>
1. Ch. 855, Section 8B(5)	Failure to minimize the possibility of any threat to public health, safety, welfare or the environment	\$ 28,690
2. Ch. 851, Section 5	Failure to adequately determine if a solid waste is a hazardous waste	\$ 20,954
3. 40 C.F.R § 268.7	Failure to comply with the Land Disposal Restriction (LDR) requirements	\$ 8,381
4. Ch. 851, Section 8C	Failure to mark containers of hazardous waste with the Words "hazardous waste"	\$ 5,158
5. Ch. 851, Section 8B(5)	Failure to ensure that all employees with hazardous waste management responsibilities are trained	\$ 79,654
6. Ch. 851, Section 8B(5)	Failure to maintain a complete personnel training plan	\$ 22,566

7. Ch. 855, Section 8B(5)	Failure to maintain a complete hazardous waste contingency plan	\$ 8,381
8. Ch. 851, Section 13(D)	Failure to conduct and document daily inspections at all satellite storage areas	\$ 2,258
9. Ch. 851, Section 5(C)	Failure to file notification	\$ 8,381
10. Ch. 851, Section 9(F)	Failure to file an annual report with MEDEP	<u>\$ 5,158</u>

**TOTAL PENALTY AMOUNT: \$189,581**