



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 18 2008

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Mr. Luis Santiago
General Manager
Wallace Silversmiths de Puerto Rico, Ltd.
P.O. Box 1177
San Germán, Puerto Rico 00683

Re: **In the Matter of Wallace Silversmiths de Puerto Rico, Ltd.**
Docket No. RCRA-02-2008-7109

Dear Mr. Santiago:

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:

Karen Maples
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.

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2008 SEP 23 PM 2:29
REGIONAL HEARING
CLERK

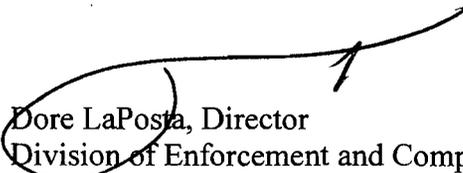
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have 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 later part of the Complaint.) For your general information and use, I also enclose an "Information Sheet for U.S. EPA Small Business Resources." This document offers some useful information and resources.

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,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

Sara A. Shindel (with enclosure)
General Counsel
Lifetime Brands
1000 Stewart Avenue
Garden City, New York 11530

Julio I. Rodriguez, Director
Land Pollution Control
EQB
Edificio de Agencias Ambientales
Avenida Ponce de Leon 1308, Carretera Estatal 8838
Sector el Cinco
Rio Piedras, Puerto Rico 00926

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 11
2008 SEP 23 PM 2:29
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CLERK

In The Matter of:

Wallace Silversmiths
de Puerto Rico, Ltd.

Respondent.

Proceeding Under Sections 3008 of the
Solid Waste Disposal Act, as amended

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

Docket No.: RCRA-02-2008-7109

I. COMPLAINT

This is a civil administrative proceeding instituted pursuant to Sections 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 the Wallace Silversmiths de Puerto Rico, Ltd. has violated provisions of RCRA and federal regulations concerning the management of hazardous waste and used oil at its Puerto Rico facility.

Pursuant to Sections 3006(b) and (h) of the Act, 42 U.S.C. §§ 6926(b) and (h), the Administrator of EPA may, if certain criteria are met, authorize a state to operate "hazardous waste management" and/or "used oil" programs in lieu of the federal programs. The Commonwealth of Puerto Rico is a "State" as that term is defined by Section 1004(31) of the Act, 42 U.S.C. § 6903(31), and therefore within the meaning of this provision. The Commonwealth of Puerto Rico, however, is not authorized by EPA to conduct hazardous waste or used oil management programs under Section 3006 of RCRA, 42 U.S.C. § 6926. Accordingly, EPA retains primary responsibility for the implementation and enforcement of RCRA's hazardous waste and used oil regulations in the Commonwealth of Puerto Rico. These regulations are set forth in 40 C.F.R. Parts 260 through 279.

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

JURISDICTION

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

NOTICE

2. EPA has given notice of this action to the Commonwealth of Puerto Rico (“Puerto Rico”).

RESPONDENT

3. Respondent is Wallace Silversmiths de Puerto Rico, Ltd. (hereinafter “Wallace” or “Respondent”). Wallace is a wholly-owned subsidiary of Lifetime Brands, Inc., a Delaware corporation.

4. Wallace has been conducting silverware manufacturing operations at a facility located in Calle B in Industrial Retiro, San German, Puerto Rico since on or about April 27, 2006.

5. Wallace’s immediate predecessor, Wallace International de P.R., conducted manufacturing operations at the Calle B, San German facility since at least 1986. Wallace International de P.R. is a subsidiary of Syratech Corporation. In or about April 27, 2006, certain assets and the related business of Wallace International de P.R. were purchased by Syratech Acquisition Corporation, a subsidiary of Lifetime Brands, Inc. (hereafter referred to as the “Purchase.”) The Purchase included the Lease Agreement between Wallace International de P.R. and the Puerto Rico Industrial Development Company (PRIDCO) pertaining to the land and certain buildings which were used by Wallace International de P.R. for its manufacturing operations. In or about April 25, 2006, Syratech Acquisition Corporation assigned the Lease Agreement to Wallace.

6. Wallace and/or its predecessors have been conducting manufacturing operations at the Calle B San German facility since 1973. These operations include the casting and finishing of table silverware and flatware. Operations occur in two buildings at the facility. These buildings are hereafter referred to as “Building 1” and “Building 2.”

GENERAL ALLEGATIONS

7. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste and used oil. 42 U.S.C. § 6901 et seq. The Administrator of EPA, pursuant to

Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), promulgated regulations regarding the management of hazardous waste, and setting standards for hazardous waste 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. The Administrator, pursuant to Section 3014 of RCRA, 42 U.S.C. § 6935, also promulgated regulations for the management of used oil. These regulations are set forth in 40 C.F.R. Part 279.

8. 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, including violations of regulations promulgated pursuant to Subtitle C set forth in Parts 260 through 279.

9. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, any person is subject to a civil penalty not to exceed \$25,000 per day for each violation of any requirement of Subtitle C of RCRA occurring prior to January 31, 1997 and, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 and 40 C.F.R. Part 19, a civil penalty not to exceed \$27,500 per day for each such violation occurring on or after January 31, 1997, and a civil penalty not to exceed \$32,500 per day for each such violation occurring after March 15, 2004.

10. Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

11. The Calle B, Industrial Retiro, San German, Puerto Rico location where Respondent conducts its manufacturing operations constitutes a "facility" as that term is defined in 40 C.F.R. § 260.10.

12. Respondent is the "operator" of the facility as that term is defined in 40 C.F.R. § 260.10.

13. In or about December, 1980, Respondent's predecessor (International Silver de P.R., Inc.) notified EPA that it generates hazardous wastes at its facility.

14. In December 1980, EPA issued Respondent's predecessor EPA Identification Number PRD090405648.

15. Respondent never submitted a notification to EPA updating or amending its predecessor's 1980 hazardous waste notification. Following the April 2006 Purchase, Respondent and/or its parent corporation (Lifetime Brands, Inc.) assumed the EPA identification number assigned to Respondent's predecessor.

16. Respondent is a hazardous waste "small quantity generator" as that term is defined in 40 C.F.R. § 260.10. Respondent stores hazardous waste at its facility as the term "storage" is defined in 40 C.F.R. § 260.10.

17. The requirements for hazardous waste generators are set forth in 40 C.F.R. Part 262.
18. Neither Respondent nor its predecessors submitted Part A or Part B of a RCRA permit application to EPA regarding the San German facility.
19. Neither Respondent nor its predecessor qualified for interim status or obtained a permit for the San German facility pursuant to Section 3005 of RCRA and 40 C.F.R. § 270.10(e).
20. Facilities that have interim status or are in existence on November 19, 1980 are subject to the requirements set forth in 40 C.F.R. Part 265. 40 C.F.R. § 265.1.
21. Respondent is a “used oil generator,” as that term is that term is defined in 40 C.F.R. § 279.1.
22. The requirements for used oil generators are set forth in 40 C.F.R. Part 279, Subpart C.

EPA Investigative and Enforcement Activities

23. Pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, on or about July 26 and 27, 2006, duly designated representatives of EPA conducted an inspection of Respondent’s facility to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations (“the RCRA Inspection”).
24. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about April 12, 2007, EPA issued Respondent a Request for Information (“Information Request”) and a Notice of Violation (“NOV”) regarding Respondent’s management of hazardous waste and used oil at its facility.
25. On or about May 23, 2007, Respondent submitted its response to EPA’s Information Request and NOV (“Response”). This Response was prepared by an employee or agent of Respondent in the course of carrying out his/her employment or duties.

COUNTS

Count 1

Failure to Make a Hazardous Waste Determination

26. Complainant re-alleges each applicable allegation contained in paragraphs 1 through 25, as if fully set forth herein.
27. Pursuant to 40 C.F.R. § 262.11, a person who generates “solid waste,” as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste.

28. Pursuant to 40 C.F.R. § 261.2, subject to certain inapplicable exclusions, a “solid waste” is any “discarded material.” Among other things, a discarded material is any material which is “abandoned,” as that term is defined in 40 C.F.R. § 261.2(b).

29. Pursuant to 40 C.F.R. § 261.2(b)(i) materials are solid wastes if they are “abandoned” by being “disposed of ... or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of....”

30. On or prior to July 26, 2006, Respondent generated and abandoned at least the following waste materials at its facility:

- a. contaminated mop water used to clean spills associated with trichloroethylene (“TCE”) solvent ultrasonic and vapor degreaser operations, which was poured down the drain.
- b. used ion-exchange resins from the treatment of plant influent water, which were accumulated for trash disposal;
- c. rags and paper towels contaminated with the machine shop parts solvent cleaner, which were accumulated for trash disposal;
- d. used cleaning solvents such as isopropyl alcohol, and rags and towels contaminated with the solvents, which were poured down the drain and accumulated for trash disposal, respectively;
- e. used mercury exterior lamps, which were accumulated for trash disposal;
- f. unidentified liquid wastes which were accumulated in approximately thirty 55-gallon drums (some of which were rusting) and left outside behind Building 2;
- g. unidentified material that appeared to be contaminated with oxidized silver, which was accumulated in a blue cylindrical poly basket (*i.e.*, a drum with holes) and placed directly on the earthen ground behind Building 2; and
- h. used buffing wheels that appeared to be contaminated with oxidized silver residuals, which were disposed of behind the facility in a pile of discarded equipment sitting directly on soil.

31. Respondent “abandoned” each of the materials identified in paragraph 30 by disposing of them on the facility’s property, accumulating them for disposal with the trash and/or by pouring them down the drain.

32. Each material identified in paragraph 30 above constitutes a “discarded material” and “solid waste,” as defined in 40 C.F.R. § 261.2.

33. Pursuant to 40 C.F.R. § 261.2, subject to certain inapplicable exclusions, a “solid waste” is any “discarded material.” A “discarded material” is, among other things, any material which is recycled – or accumulated, stored, or treated before recycling - as specified in 40 C.F.R. §§ 261.2(c)(1) – (4).

34. Pursuant to 40 C.F.R. § 261.2(c)(3), certain materials, including “spent materials,” are recycled - or accumulated, stored or treated before being recycled - by being “reclaimed.”

35. Pursuant to 40 C.F.R. § 261.1(c)(1), a “spent material” is “any material that has been used and as a result of contamination can no longer serve the process for which it was produced without processing.”

36. Pursuant to 40 C.F.R. § 261.1(c)(4), a material is “reclaimed” if it is “processed to recover a usable product...”

37. Respondent uses buffing compound in its operations to, among other purposes, polish silver. Respondent uses the buffing compound until it is too contaminated for further use as a buffing/polishing agent without processing.

38. On or prior to July 26, 2006, Respondent sent used buffing compound, and/or accumulated used buffing compound to be sent, off site for silver reclamation.

39. The used buffing compound generated by Respondent is a “spent material,” that is recycled by being “reclaimed” or “accumulated before ... being ‘reclaimed,’” as those terms are defined in 40 C.F.R. § 261.1.

40. The buffing material identified in paragraph 37 above is a “discarded material” and “solid waste,” as defined in 40 C.F.R. § 261.2(c)(3).

41. As of at least July 26, 2006 Respondent had not determined if any of the solid wastes identified in paragraphs 30 and 37 constituted a hazardous waste.

42. Respondent’s failure to determine if each solid waste generated at its facility constitutes a hazardous waste is a violation of 40 C.F.R. § 262.11.

43. Respondent’s failure to comply with 40 C.F.R § 262.11 subjects it to penalties pursuant to Section 3008 of the Act.

Count 2
Failure to Minimize Risk

44. Complainant re-alleges each applicable allegation contained in paragraphs 1 through 25 as if fully set forth herein.
45. Subpart C of 40 C.F.R. Part 265 (40 C.F.R. §§ 265.30 – 265.37) sets forth requirements regarding preparedness and prevention. These requirements apply to all facilities in existence as of November 19, 1980. See 40 C.F.R. § 265.1(b).
46. Pursuant to 40 C.F.R. § 265.31, a facility must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.
47. On or before July 26 and 27, 2006, Respondent:
- a. Placed drums containing used oil on cracked and broken asphalt behind Building 2. Several of these drums were rusted and one was visibly bulging. Releases would directly impact the soil or migrate to adjacently located storm water culverts potentially contaminating storm water entering the drainage system.
 - b. Placed discarded both: i) production equipment visibly contaminated with oil and other process liquids; and ii) buffing wheels visibly contaminated with oxidized silver residuals, directly on the soil behind Building 2. Any releases of hazardous constituents and/or oil from the equipment would directly impact the soil.
 - c. Placed fluorescent bulbs, which may contain mercury, directly on an earthen berm located at the facilities property line. Some of these bulbs were broken. Any releases of mercury would directly impact the soil.
 - d. Operated a Greco Brothers Ultrasonic Degreaser (“Greco Machine”) that used TCE to clean sterling flatware. The Greco Machine employs an open tank process, permitting significant losses of TCE vapor to the ambient air with accompanying human health risks. Based on the quantities of TCE used by Respondent, EPA estimates that thousands of pounds of TCE were potentially released annually during operation of the Greco machinery.
 - e. Spilled TCE and related waste residues on the floor in the room housing the Greco Machine. Floor drains in this room were connected to the facility’s evaporator. The evaporator was not designed to manage volatile organic solvents.
 - f. Filtered oil from water across three drums using a “home-made” filtering process causing

spills of oil/water liquids. These spilled liquids accumulated in or around the storm water culvert potentially contaminating storm water entering the drainage system.

- g. Failed to ensure the proper management of TCE related hazardous waste. From January, 1992 through approximately December 26, 2006 the facility used approximately 171,500 pounds of TCE. Respondent cannot account for the disposal of any TCE-contaminated hazardous waste generated until July 2006 when it sent approximately 5,380 pounds of TCE-contaminated hazardous waste off-site for disposal. The facility's failure to track and ensure the proper disposal of TCE contaminated hazardous waste may have resulted in the release of tens of thousands of pounds of TCE hazardous waste or hazardous waste constituents to air, soil, surface or groundwater during this time period.

48. Each action or inaction set forth in Paragraph 47 is a failure by Respondent to maintain and operate its facility in a manner minimizing the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment, and constitutes a violation of 40 C.F.R. § 265.31.

49. Respondent's failure to comply with 40 C.F.R § 265.31 subjects it to penalties pursuant to Section 3008 of the Act.

Count 3

Failure to Comply With Certain Use and Managerial Requirement for Containers

50. Complainant re-alleges each allegation contained in paragraphs 1 through 25 as if fully set forth herein.

51. Subpart I of 40 C.F.R. Part 265 (40 C.F.R. §§ 265.170 – 265.178) sets forth requirements regarding the use and management of hazardous waste containers. These requirements apply to all facilities in existence as of November 19, 1980 that treat, store or dispose of hazardous waste. See 40 C.F.R. § 265.1(b).

52. Pursuant to 40 C.F.R. § 265.173(a), a container holding hazardous waste must be closed during storage, except when it is necessary to add or remove waste.

53. During at least July 26 and 27, 2006, Respondent left a minimum of one container of hazardous waste open during periods of time when it was not necessary to add or remove waste. This container was located behind the Greco Brothers Ultrasonic Degreaser.

54. Respondent's failure to keep all containers holding hazardous waste closed except when necessary to add or remove waste constitutes a violation of 40 C.F.R. § 265.173(a).

55. Pursuant to 40 C.F.R. § 265.177(c), a storage container holding hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

56. During at least July 26 and 27, 2006, Respondent stored hazardous waste containers, used oil and various waste materials including oxidizers, caustics, chlorinated solvents and unlabeled materials in Building 2's chemical storage cages without any physical separation. Caustics and oxidizers are incompatible with chlorinated solvents (halogenated hydrocarbons), and oxidizers are incompatible with flammable and combustible wastes such as used oil. See e.g., Appendix V of 40 C.F.R. Part 264, (Examples of Potentially Incompatible Waste).

57. Respondent's failure to separate hazardous waste and incompatible materials by means of a dike, berm, wall or other device is a violation of 40 C.F.R. § 265.177(c).

58. Pursuant to 40 C.F.R. § 265.174, at least weekly, owners or operators must inspect areas where hazardous waste containers are stored, looking for leaks and deterioration caused by corrosion or other factors.

59. During at least July 26 and 27, 2006, hazardous waste containers were tightly packed in the chemical storage cages behind Building 2. No aisle space was maintained between the drums. These conditions made it impossible for inspectors to look for and detect leaks from, and/or deterioration of, the containers stored in this area.

60. Respondent's manner of storage prevented inspectors from conducting effective weekly inspections and is a violation of 40 C.F.R. § 265.174.

61. Respondent's failure to comply with each of the above cited provisions (40 C.F.R §§ 265.173, 265.174 and 265.177) subjects it to penalties pursuant to Section 3008 of the Act.

Count 4
Operation of Storage Facility Without a Permit

62. Complainant re-alleges each allegation contained in paragraphs 1 through 25 and 44 through 61 as if fully set forth herein.

63. Pursuant to 40 C.F.R. §§ 262.34(d) and (e), a small quantity generator may accumulate hazardous waste on-site for up to one hundred and eighty (180) days (or 270 days if waste is transported to an off-site location a distance of 200 miles away or more) without having a permit or interim status provided the generator complies with the requirements specified therein including but not limited to the requirements set forth in Subparts C and I of 40 C.F.R. Part 265.

64. Pursuant to 40 C.F.R. § 262.34(f), small quantity generators who accumulate hazardous waste for more than 180 days (or 270 days if waste is transported to an off-site location a distance of 200 miles away or more) must comply with the permitting requirements set forth in Part 270.
65. Pursuant to 40 C.F.R. § 270.1(c) and Section 3005 of the Act, 42 U.S.C. § 6925, a RCRA permit is required for the “storage” of hazardous waste, as that term is defined in 40 C.F.R. § 260.10.
66. In approximately 1992, the facility started using trichloroethylene (TCE) in its manufacturing operations. While usage fluctuates with manufacturing volume, Respondent uses approximately 550 gallons of TCE per year.
67. On or about July 31, 2006, Respondent shipped approximately 6,400 pounds of hazardous waste off-site for disposal at a facility in El Dorado, Arizona, a distance of greater than 200 miles from Respondent’s facility. This shipment included approximately 5,380 pounds (440 gallons) of used TCE (manifested off-site as hazardous waste D040).
68. Some of the hazardous waste referenced in paragraph 67 had been stored at Respondent’s facility since at least 1996, a period of ten (10) years.
69. As of at least July 31, 2006, hazardous waste has accumulated at Respondent’s facility for more than 270 days.
70. Respondent failed to maintain and operate its facility in a manner to minimize threats to human health and the environment as required by 40 C.F.R. § 265.31, set forth in Subpart C of 40 C.F.R. Part 265. See Count 2.
71. Respondent failed to comply with numerous requirements regarding the use and management of containers set forth in 40 C.F.R. Part 265, Subpart I. See Count 3.
72. As of at least July 31, 2006: i) hazardous waste had been stored at Respondent’s facility for a period of time greater than 270 days; and ii) Respondent had failed to satisfy all the requirements for generators set forth in 40 C.F.R. § 262.34(d) – (e) which, if complied with, would have allowed Respondent to store hazardous waste without interim status or a permit for up to 180 (or 270) days.
73. Respondent never obtained interim status or a permit from EPA authorizing the storage of hazardous waste at its facility.
74. Respondent’s storage of hazardous waste at its facility prior to July 31, 2006 without a permit is a violation of 40 C.F.R. § 270.1 and Section 3005 of the Act, 42 U.S.C. § 6925.

75. Respondent's failure to have a permit as required by 40 C.F.R. § 270.1 and Section 3005 of the Act, 42 U.S.C. § 6925 subjects it to penalties pursuant to Section 3008 of the Act.

Count 5
Used Oil Violations

76. Complainant re-alleges each allegation contained in paragraphs 1 through 25 as if fully set forth herein.

77. The standards for the management of used oil are set forth in 40 C.F.R. Part 279. For the purposes of Part 279, "used oil" is "any oil that has been refined from crude oil or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities" and a "used oil generator" is "any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation." 40 C.F.R. § 279.1.

78. Respondent maintains and repairs equipment at its facility resulting in the collection and accumulation of "used oil," as that term is defined in 40 C.F.R. § 279.1.

79. Respondent generated approximately one hundred gallons per month (two 55 gallon drums) of used oil.

80. Respondent is a "used oil generator," as that term is defined in 40 C.F.R. § 279.1, subject to the standards for used oil generators set forth in Subpart C of 40 C.F.R. Part 279.

81. Pursuant to 40 C.F.R. §§ 279.22(b) and (c), containers and above ground tanks used to store used oil must be in good condition (no severe rusting, apparent structural defects or deterioration) and must be labeled or marked clearly with the words "used oil."

82. As of at least July 26 and July 27, 2006, Respondent was accumulating used oil in unlabeled drums and cans, some of which displayed rusting and deterioration.

83. Respondent's failure to store used oil in properly labeled containers that are in good condition constitutes a violation of 40 C.F.R. § 279.22.

84. Respondent's failure to comply with 40 C.F.R. § 279.22 subjects it to penalties pursuant to Section 3008 of the Act.

II. PROPOSED CIVIL PENALTY

Counts 1 through 5 for Hazardous Waste and Used Oil Violations

The Complainant proposes, subject to the receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

Count 1: \$ 25,790

Count 2: \$ 29,146

Count 3: \$ 22,566

Count 4: \$ 52,512

Count 5: \$ 10,315

Total Proposed Penalty for Counts 1 through 5 is \$140,329.

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.”

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations occurring between January 31, 1997 and March 15, 2004 is \$27,500 per day of violation. 40 C.F.R. Part 19. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations occurring after March 15, 2004 is \$32,500 per day of violation. Id.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case and has used EPA’s 2003 RCRA Civil Penalty Policy. A copy of this penalty policy is available upon request or can be found on the Internet at “www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf.” The penalty amounts in the 2003 RCRA Civil Penalty Policy were amended later to reflect inflation adjustments. These adjustments were made pursuant to a September 21, 2004 document entitled, “Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, effective October 1, 2004)” and a

January 11, 2005 document entitled “Revised Penalty Matrices for the RCRA Civil Penalty Policy.” This RCRA Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

A penalty calculation worksheet and narrative explanation to support the penalty figure for each RCRA violation cited in this Complaint is included in Attachment I, below. The matrix employed in the determination of the penalty is included as Attachment II, below. These Attachments are incorporated by reference herein.

The RCRA penalty policy provide a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases

III. COMPLIANCE ORDER

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

1. Within twenty days of the effective date of this Compliance Order, Respondent shall:
 - a. make hazardous waste determinations regarding all solid waste generated at its facility pursuant to 40 C.F.R. § 262.11;
 - b. comply with all applicable container standards set forth in Subpart I of 40 C.F.R. Part 265, including: keeping hazardous waste containers closed except when necessary to add or remove waste; thoroughly inspecting all hazardous waste storage areas on a weekly basis; and separating incompatible wastes by a wall, berm or other physical mechanism.
 - c. minimize the risk of fires, explosions or unplanned releases of hazardous waste and constituents pursuant to 40 C.F.R. § 265.31 through actions such as but not limited to:
 - i. ensuring that chemicals and other hazardous materials are stored and managed in a manner which minimizes the possibility of a fire, explosion, and/or release, including minimizing the potential for incompatible substances to come in physical contact with each other, particularly during fires and spills; and
 - ii. ensuring that stored chemicals and other hazardous materials do not routinely spill, leak, or otherwise breach their containers and that all such spillage or leakage, if determined to be hazardous, is cleaned up and managed as hazardous waste.

- d. comply with all applicable regulations for used oil generators set forth in 40 C.F.R. Part 279 including: storing used oil in containers that are in good condition; and labeling the containers as containing used oil.
- e. and otherwise comply with all applicable provisions for generators set forth in 40 C.F.R. § 262.34, including storage of waste for no more than 180 days (or 270 days if shipping greater than 200 miles) and compliance with Subparts C and I of 40 C.F.R. Part 265, or alternatively, obtain and comply with a hazardous waste permit pursuant to the provisions of 40 C.F.R. Part 270.

2. Within fifty days of the effective date of this Order, Respondent shall send a Compliance Report to EPA detailing the status of its compliance with the requirements set forth in Section III.1 of this Compliance Order. This Compliance Report shall include all appropriate documentation and evidence. The Compliance Report should be sent to:

Carl Plossl
Environmental Engineer
Senior Enforcement Team
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

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

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise release Respondent from liability for any violations at the facility. Further, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provisions of law regarding the facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to \$32,500 for each day of continued noncompliance which occurs after March 14, 2004. (This penalty amount may be increased in the future to take into account inflation.)

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been 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,” and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this “Complaint, Compliance Order and Notice of Opportunity for Hearing.”

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order 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, and such Answer must be filed within 30 days after service of the 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, New York 10007-1866**

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 to affirmatively 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, 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). Unless Respondent requests a hearing within thirty (30) days after the Compliance Order is served pursuant to 40 C.F.R. § 22.15, the Compliance Order in this complaint 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 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 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 Respondent, and to collect the assessed penalty amount, in federal court. 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. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB") 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).

To appeal an initial decision to the EAB, Respondent must do so “[w]ithin thirty (30) days after the initial decision is served.” 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, “five days shall be added to the time allowed by these rules for the filing of a responsive pleading or 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 a representative(s) of Complainant, Respondent may comment on the charges made in the 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/or (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, to reflect 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:

Amy R. Chester
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866
212-637-3213

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

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 will 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 its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). 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 such Consent Agreement terminate this administrative litigation and the 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 its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

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

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants 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 herein.

Dated: September 18, 2008
New York, New York

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2

cc: Julio I. Rodriguez, Director
Land Pollution Control, PREQB

ATTACHMENT I

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

Respondent: Wallace Silversmiths de Puerto Rico, Ltd

Facility Address: Calle B Industrial Retiro, San German, Puerto Rico

Requirement Violated:

40 C.F.R. § 262.11 - Respondent failed to determine if each solid waste generated at its facility constituted a hazardous waste.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$25,790
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3	\$25,790
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	Preliminarily determined to be less than \$5,000
11. Add lines 4, 9 and 10 for penalty amount To be inserted into the Complaint	\$25,790

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

1. Gravity Based Penalty

- a. Potential for Harm - The potential for harm for failing to conduct hazardous waste determinations is MAJOR. 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 generating several streams of solid waste fails to determine whether each of the generated waste streams is hazardous. Failure to make hazardous waste determinations will likely result in hazardous waste being managed as a non-hazardous waste, outside of the RCRA regulatory universe. This single violation can result in multiple sequential violations regarding each unidentified hazardous waste stream. Further, failure to manage a hazardous waste pursuant to the RCRA regulatory scheme increases the risk of human and environmental exposure. In this instance, failure to make hazardous waste determinations may have resulted in the release of hazardous waste and constituents into the environment.

- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. Respondent failed to make hazardous waste determinations for numerous waste streams, some of which Respondent generated regularly over an extended period of time. The extent of deviation was deemed moderate however since Respondent made hazardous waste determinations for other waste streams at its facility.

The applicable cell ranges from \$25,790 to \$19,343. The high point for the cell matrix was selected given the multiple waste streams.

- c. Multiple/Multi-day - Failure to make a hazardous waste determination for these waste streams is being considered, initially, as a one-time event.

2. Adjustment Factors

- a. Good Faith EPA is not presently aware of good faith efforts made by Respondent prior to EPA's inspection.
- b. Willfulness/Negligence N/A
- c. History of Compliance N/A
- d. Ability to Pay N/A
- e. Environmental Project N/A
- f. Other Unique Factors N/A

3. Economic Benefit - Preliminarily determined to be less than \$5,000.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)**

Respondent: Wallace Silversmiths de Puerto Rico, Ltd.

Facility Address: Calle B Industrial Retiro, San Germán, Puerto Rico

Requirements Violated:

40 C.F.R. § 265.31 - Respondent failed to operate the facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil or surface water which could threaten human health or the environment.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$29,146
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3	\$29,146
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	Preliminarily determined to be less than \$5,000.
11. Add lines 4, 9 and 10 for penalty amount to be inserted in the complaint.	\$29,146

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 2)

1. Gravity Based Penalty

- a. Potential for Harm - The potential for harm presented by Respondent's failure to minimize risk is MAJOR. During the Inspection, EPA observed pervasive unsafe chemical and waste storage and management practices throughout the facility. These practices, detailed within the Count, singularly and cumulatively increased the facility's risk of fires, explosions, gaseous emissions, leaching or other discharges of hazardous waste or constituents. Many of the practices outlined in the Count involved Respondent's use of the trichloroethylene (TCE), which is the primary solvent employed by Respondent in its solvent ultrasonic and vapor degreaser operations. TCE may cause adverse health effects. The potential for harm from facility operations is exacerbated by its proximity to residential neighborhoods, less than 500 feet, and its location within the Guanajibo alluvial valley drinking water aquifer.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. The numerous actions and inactions detailed in the Count represent a significant failure on the part of the Respondent to maintain and operate its facility in a manner that is protective of human health and the environment.

The applicable cell ranges from \$25,791 to \$32,500. The mid point of the cell matrix was selected.

- c. Multiple/Multi-day - The operating conditions that resulted in this violation existed for a significant period preceding the inspection. Multi-day penalties can be waived in regard to mitigating, site-specific facts. EPA is seeking a substantial multi-day penalty for Count 4. The multi-day penalty component for Count 4 reflects the substantial potential adverse environmental and public health impact this facility has posed over time. Therefore, in the exercise of its discretion, EPA is not seeking a multi-day penalty for this Count.

2. Adjustment Factors

- a. Good Faith - EPA is not presently aware of good faith efforts made by Respondent prior to EPA's inspection.
- | | |
|---------------------------|-----|
| b. Willfulness/Negligence | N/A |
| c. History of Compliance | N/A |
| d. Ability to Pay | N/A |
| e. Environmental Project | N/A |
| f. Other Unique Factors | N/A |

3. Economic Benefit – Preliminarily determined to be less than \$5,000.

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)**

Respondent: Wallace Silversmiths de Puerto Rico, Ltd.

Facility Address: Calle B Industrial Retiro, San Germán, Puerto Rico

Requirements Violated:

40 C.F.R. § 265.173(a) - Respondent failed to close containers with hazardous waste when waste was not being added or removed.

40 C.F.R. § 265.177(c) - Respondent failed to separate hazardous waste and incompatible materials by means of a dike, berm, wall or other device.

40 C.F.R. § 265.174 - Respondent failed to, at least weekly, inspect areas where containers are stored, looking for leaks and deterioration caused by corrosion or other factors.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$22,566
(a) Potential for harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3	\$22,566
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	Preliminarily determined to be less than \$5,000.
11. Add lines 4, 9 and 10 for penalty amount to be inserted in the complaint.	\$22,566

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 3)**

1. Gravity Based Penalty

- a. Potential for Harm - The potential for harm presented by these violations was determined to be MAJOR. Containers holding hazardous waste must be closed except when it is necessary to remove or add waste. This requirement minimizes the emissions of volatile wastes, protects ignitable or reactive wastes from sources of ignition or reaction, prevents spills and reduces the potential mixing of incompatible wastes. Additionally, the storage of incompatible wastes increased the facility's risk of fires, explosions, gaseous emissions, leaching or other discharge of hazardous waste or constituents, placing human health and the environment at risk. This risk was exacerbated by Respondent's failure to leave aisle space between hazardous waste containers, preventing Respondents from fully inspecting the container storage area and assessing whether containers were deteriorating and/or leaking.
- b. Extent of Deviation - The extent of deviation present in this violations were determined to be MODERATE. During EPA's inspection, it only observed one open container. Additionally, although inadequate because of Respondent's failure to provide aisle space between containers, Respondent did conduct partial inspections of the container storage area.

The applicable cell ranges from \$25,790 to \$19,343. This Count alleges three distinct violations of Subpart I of 40 C.F.R. Part 265. However, because the potential for harm and adverse risks created by these violations are reflected in Count 2 (failure to minimize risk), EPA selected the mid point of the cell matrix.

- c. Multiple Violation /Multi-day - Failure to comply with these regulatory requirements is initially being considered a one-time event.

2. Adjustment Factors

- a. Good Faith - EPA is not presently aware of good faith efforts made by Respondent prior to EPA's inspection.
- b. Willfulness/Negligence N/A
- c. History of Compliance N/A
- d. Ability to Pay N/A
- e. Environmental Project N/A
- f. Other Unique Factors N/A

- 3. Economic Benefit – Preliminarily determined to be less than \$5,000.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 4)

Respondent: Wallace Silversmiths de Puerto Rico, Ltd.

Facility Address: Calle B Industrial Retiro, San Germán, Puerto Rico 00753

Requirement Violated:

Section 3005 of the Act, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1(c) - Respondent stored hazardous waste at its facility without having obtained a hazardous waste permit or qualifying for interim status.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$22,566
(a) Potential for harm.	MODERATE
(b) Extent of Deviation.	MAJOR
2. Select an amount from the appropriate multi-day matrix cell.	\$ 322
3. Multiply line 2 by number of days of violation minus 1 (93 days)	\$29,946
4. Add line 1 and line 3	\$52,512
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	Preliminarily determined to be less than \$5,000.
11. Add lines 4, 9 and 10 for penalty amount to be inserted in the complaint.	\$52,512

**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 4)**

1. Gravity Based Penalty
 - a. Potential for Harm - The potential for harm present in this violation was determined to be MODERATE. Operating a treatment, storage, or disposal facility without a permit (and compliance therewith) is a serious violation with the potential to result in harm to human health and the environment. Potential for harm was determined to be moderate, however, because the penalties assessed for Counts 2 and 3 already took into account some of the same problems.
 - b. Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Hazardous waste was stored at the facility without interim status or a permit authorizing such storage. Additionally, Respondent did not qualify for the exemption to permitting requirements for generators because: 1) hazardous waste was stored on site for longer than 180/270 days; 2) Respondent was not in compliance with numerous requirements set forth in 40 C.F.R. 262.34.

The applicable cell ranges from \$19,343 to \$25,790. The mid point for the cell matrix was selected.

- c. Multiple/Multi-day - Hazardous waste was accumulated and stored at Respondent's facility for a period of at least ten years. Nonetheless, in accordance with the RCRA Civil Penalty Policy, EPA is using its discretion in selecting 93 days as the period of time in which the multi-day penalty component was calculated (94 days minus 1 day), covering the time period between April 27, 2006 (the date Respondent became the facility operator) and July 31, 2006 (the date the hazardous waste was shipped off-site).

In applying the multi day matrix, EPA determined that the violation presented a moderate potential for harm for the reasons set forth above. Given the relatively low increased incremental potential for harm from each additional day of storage, EPA determined that, for the purpose of assessing the multi-day penalty component, the potential for harm was also moderate, and the low end of the cell matrix was the appropriate factor to be applied.

2. Adjustment Factors
 - a. Good Faith - EPA is not presently aware of good faith efforts made by Respondent prior to EPA's inspection.
 - b. Willfulness/Negligence - N/A
 - c. History of Compliance - N/A
 - d. Ability to Pay - N/A
 - e. Environmental Project - N/A
 - f. Other Unique Factors - N/A
3. Economic Benefit - Preliminarily determined to be less than \$5,000.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 5)

Respondent: Wallace Silversmiths de Puerto Rico, Ltd.

Facility Address: Calle B Bo Industrial Retiro, San Germán, Puerto Rico 00753

Requirements Violated:

40 C.F.R. §§ 279.22(b) and (c) - Respondent failed to store used oil in containers that were in good condition and clearly labeled with the words "used oil."

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix	\$10,315
(a) Potential for harm.	MODERATE
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	N/A
3. Multiply line 2 by number of days of violation minus 1.	N/A
4. Add line 1 and line 3	\$10,315
5. Percent increase/decrease for good faith.	N/A
6. Percent increase for willfulness/negligence.	N/A
7. Percent increase for history of noncompliance.	N/A
8. Total lines 5 through 7.	N/A
9. Multiply line 4 by line 8.	N/A
10. Calculate economic benefit.	Preliminarily determined to be less than \$5,000.
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$10,315

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Count 5)

1. Gravity Based Penalty

- a. Potential for Harm - The potential for harm in this violation was determined to be MODERATE. Respondent's failure to label containers with the words "Used Oil" poses some potential for the mismanagement of drums and the inadvertent release of the drum contents to the environment. Storage of oil in rusting deteriorating drums increases risk of leaks and releases.
- b. Extent of Deviation - The extent of deviation present in this violation was determined to be MODERATE. Respondent appears to have properly managed and disposed of the majority of the used oil generated at its facility.

The applicable cell ranges from \$6,448 to \$10,315. EPA selected the high point of the cell matrix since this Count incorporates two distinct violations of 40 C.F.R. § 279.22.

Multiple/Multi-day - Failure to comply with these regulatory requirements is initially being considered a one-time event.

2. Adjustment Factors

- a. Good Faith - EPA is not presently aware of good faith efforts made by Respondent prior to EPA's inspection.
- b. Willfulness/Negligence - N/A
- c. History of Compliance - N/A
- d. Ability to Pay - N/A
- e. Environmental Project - N/A
- f. Other Unique Factors - N/A

3. Economic Benefit - Preliminarily determined to be less than \$5,000.

ATTACHMENT II

GRAVITY MATRIX

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L f o r H A R M		MAJOR	MODERATE	MINOR
	MAJOR (mid point)	\$32,500 to 25,791 (29,146)	\$25,790 to 19,343 (22,566)	\$19,342 to 14,185 (16,764)
	MODERATE (mid point)	\$14,184 to 10,316 (12,250)	\$10,315 to 6,448 (8,382)	\$6,447 to 3,869
	MINOR (mid point)	\$3,868 to 1,934 (14,520)	\$1,933 TO 645	\$644 TO 129

MULTI-DAY MATRIX

		EXTENT OF DEVIATION FROM REQUIREMENT		
P O T E N T I A L f o r H A R M		MAJOR	MODERATE	MINOR
	MAJOR (mid point)	\$6,448 to 1,290 (3,869)	\$4,999 to 967 (2,983)	\$3,869 to 709
	MODERATE	\$2,837 to 516	\$2,063 to 322	\$1,290 to 193
	MINOR	\$774 to 129	\$387 to 129	\$129