

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:

ISP Freetown Fine Chemicals, Inc.

MAR000009605

Proceeding under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

Docket No. RCRA-01-2018-0062

COMPLAINANT’S INITIAL PREHEARING EXCHANGE

As required by this Tribunal’s Prehearing Order dated October 22, 2020 (the “Prehearing Order”), the Complainant United States Environmental Protection Agency Region 1 (“EPA”), submits the following initial prehearing exchange information.

1(A). Complainant’s Witness List

The following witnesses may testify on direct and/or on rebuttal:

Richard Piligian
Environmental Engineer
U.S. EPA Region 1
5 Post Office Square, Suite 100 (mail code 5-4)
Boston, MA 02109

Richard Piligian will testify as a fact witness. Mr. Piligian is EPA’s principal inspector in this matter. He will testify about his educational and employment background. He will also testify about his August 2017 inspection of Respondent’s manufacturing facility in Assonet, Massachusetts (“Facility”) and his review of records and other information obtained from Respondent. Mr. Piligian will testify concerning the facts and evidence he obtained during and

after the inspection, and the basis for the determination that Respondent violated the Resource Conservation and Recovery Act (“RCRA”), the regulations promulgated thereunder, and the federally-authorized state hazardous waste regulations. Mr. Piligian also will testify as to how the penalty proposed in the Complaint was calculated. Mr. Piligian will also testify about EPA’s National Enforcement Initiative (“NEI”) (subsequently renamed as a National Compliance Initiative), with respect to RCRA’s air emission requirements, and any matters raised by Respondent’s defenses.

Michael Bellot
Associate Division Director, Waste and Chemical Enforcement Division
Office of Civil Enforcement, Office of Enforcement and Compliance Assurance
U.S. EPA
1200 Pennsylvania Avenue N.W. (mail code 2249A)
Washington, D.C. 20460

Michael Bellot will testify as a fact witness. Mr. Bellot had a leading role in implementing EPA’s NEI with respect to RCRA air emission requirements. He will testify about his educational and employment background. He will testify about the history and the purpose of EPA’s NEI for RCRA air emission requirements and the work of the Agency to implement EPA’s NEI. He will also testify about the trainings EPA provided to staff on inspection approaches specifically geared to evaluate RCRA air emission requirements and EPA’s efforts to provide outreach to the regulated community about EPA’s NEI concerning RCRA air emission requirements.

Kevin Schanilec
Environmental Engineer
U.S. EPA Region 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

Kevin Schanilec will testify as an expert witness. He will testify regarding his educational background and employment experience. In addition, he will testify regarding his knowledge of distillation processes, batch processing, and the use of vacuum pressure at manufacturing facilities. He also will give his opinion regarding the point in ISP’s processes at which the used waste solvent is condensed into liquid, the accumulation and storage function of the receiver tanks and associated equipment at ISP, and any matters raised by Respondent’s defenses.

Eric Morin
 Environmental Manager
 ISP Freetown Fine Chemicals Inc.
 238 South Main Street
 Assonet, MA 02702-1699

Eric Morin will testify as a fact witness. Mr. Morin was present during the inspection and communicated with Richard Piligian and other EPA inspectors. Mr. Morin will testify as to whether Respondent had a Subpart BB or CC program for the Facility’s receiver tanks and equipment connected to the tanks, and to the type and quantities of solvent materials that enter the tanks from this equipment.

1(B). Complainant’s List of Exhibits

CX#	Description
1	RCRA Inspection Report (May 31, 2018)
2	EPA Early Warning Letter re: Notice of Violation to ISP (January 24, 2018)
3	ISP Response to EPA Early Warning Letter (March 22, 2018)
4	EPA Certified Mail Service Confirmation of Complaint and Copy of Cover Letter to ISP (September 26, 2018)
5	EPA Explanation of Penalty Calculation (December 18, 2020)
6	RCRA Civil Penalty Policy (June 23, 2003)
7	EPA Penalty Inflation Adjustment Memo (January 11, 2018)
8	EPA Notice of Violation to ISP (November 30, 2009)
9	80 Federal Register 55352 – RCRA Air Enforcement Initiative (September 15, 2015)

10	EPA Advisory on RCRA Organic Air Emissions Standards for TSDFs and Generators (July 1998)
11	EPA Compliance Advisory on Reduction of Hazardous Waste Air Emissions (April 2018)
12	EPA Enforcement Alert: National Compliance Initiative Focus on RCRA Air Emissions (June 2020)
13	45 Federal Register 33084, at 33095 – Hazardous Waste Management System: Identification and Listing of Hazardous Waste, Final Rule (May 19, 1980)
14	45 Federal Register 72024 – Hazardous Waste Management System: General and Identification and Listing of Hazardous Waste, Interim Final Amendment (October 30, 1980)
15	52 Federal Register 3748 – Hazardous Waste Treatment, Storage, and Disposal Facilities: Air Emission Standards for Volatile Organics Control, Proposed Rule (February 5, 1987)
16	55 Federal Register 25454 – Hazardous Waste Treatment, Storage, and Disposal Facilities - Organic Air Emission Standards for Process Vents and Equipment Leaks, Final Rule (June 21, 1990)
17	63 Federal Register 28556, at 28584 (Discussion of 40 C.F.R. 261.4(c)) (May 26, 1998)
18	RCRA Online 13126 – EPA Letter to Roy F. Weston, Inc. re: Applicability of Revised Hazardous Waste Tank System Standards to Ancillary Equipment and to Exempted Elementary Neutralization Systems (January 27, 1988) https://rcrapublic.epa.gov/files/13126.pdf
19	RCRA Online 13790 – EPA Letter to Diamond Shamrock Chemicals Company re: Final Hazardous Waste Tank System Rules (51 FR 25422) (December 19, 1986) https://rcrapublic.epa.gov/files/13790.pdf
20	RCRA Online 14152 – EPA Letter to Jill A. Weller (undated) https://rcrapublic.epa.gov/files/14152.pdf
21	RCRA Online 14469 – EPA Memo from Office of Solid Waste to Division of Enforcement and Compliance Assistance re: Kodak Claim for Manufacturing Process Unit Exemption to the RCRA Subpart BB Air Emissions Requirements (May 26, 2000) https://rcrapublic.epa.gov/files/14469.pdf
22	RCRA Online 14632 – EPA Memo from Office of Solid Waste to RCRA Senior Policy Advisors re: Guidance on RCRA Subpart J Secondary Containment Requirements as Automobile Spray Painting Operations (November 18, 2002) https://rcrapublic.epa.gov/files/14632.pdf
23	Richard A. Piligian Resume
24	Kevin A. Schanilec Resume
25	<i>McCoy's RCRA Unraveled</i> ; 2017 ed., select pages
	URL TO MASSACHUSETTS STATE REGULATIONS
	https://www.mass.gov/regulations/310-CMR-30000-massachusetts-hazardous-waste-regulations

1(C). Length of Direct Case and Statement on Whether Interpreter is Necessary

EPA believes that it can present its direct case in approximately two days. None of EPA's witnesses require an interpreter.

2(A). Documentation of Proof of Service of the Complaint

Complainant's Exhibit CX-4 contains proof of service of the Complaint.

2(B). Brief Narrative Statement, and Copies of Any Documents in Support, Explaining in Detail the Factual and/or Legal Bases for the Allegations Made in the Amended Complaint That Respondent Denied or Otherwise Did Not Admit in Its Answer and That Are Still in Dispute

EPA's Amended Complaint is divided into 12 sections. The narrative below lists each of the Amended Complaint's first seven sections (Sections I through VII) and discusses allegations within them that Respondent denies or otherwise does not admit in its Answer and Reaffirmation for Request for Hearing, dated June 25, 2019 ("Answer"), and that are still in dispute in this case. The Amended Complaint's last five sections (Sections VIII through XII) pertain to procedural matters and contain no factual or legal allegations, and thus are not discussed below.

The number of matters still in dispute have been substantially reduced by a Partial Consent Agreement and Final Order ("Partial CAFO"), which memorialized a partial settlement agreement between the parties in this case. The Partial CAFO, which was filed on October 19, 2020, resolved Counts 5, 7, 8, and 9 of the Amended Complaint and partially resolved Counts 1, 2, 3, 4, and 6. As a result, only two core matters remain at issue in this case: (1) under Count 1, whether four receiver tanks at the Facility are operating as hazardous waste storage tanks and must be managed as hazardous waste tanks under federally-authorized state hazardous waste regulations referenced by 310 C.M.R. § 30.343(1) (collectively, "federally-authorized hazardous waste tank regulations"); and (2) under Counts 2, 3, 4, and 6, whether these four receiver tanks

and equipment that transfers material to these tanks are subject to federal RCRA air emissions regulations at 40 C.F.R. Part 265, Subparts BB and CC (hereinafter, “Subparts BB and CC”). *See* Partial CAFO, Paragraphs 6 - 11.¹

Because of the Partial CAFO, the narrative below discusses only Counts 1, 2, 3, 4, and 6 in Section V of the Amended Complaint. In addition, Respondent agreed in the Partial CAFO to withdraw its Motion to Dismiss Counts Two Through Eight for Failure to State a Claim and agreed to strike the Third and Sixteenth Defenses from its Answer. *See* Partial CAFO, Paragraph 12. As a result, Respondent’s claims that one of EPA’s cited regulatory provisions did not exist or was moot have been dropped, and these claims (which appeared repeatedly in Respondent’s Answer) are not discussed in the narrative below.

Finally, this narrative does not discuss paragraphs or allegations that Respondent admits, or for which Respondent states that cited statutory, regulatory, or other text speaks for itself, or for which Respondent claims that a legal conclusion requires no response, except in those circumstances where such discussion is warranted because it is relevant to issues still in dispute.

Section I of the Amended Complaint – Statement of Authority (Paragraphs 1-4)

For Paragraph 1, Respondent states that the allegations contain statutory or regulatory citations that require no response but denies the allegations to the extent that a response is required. Complainant responds that the statutes and regulations cited are accurate.

¹Although the Amended Complaint alleges facts and resulting violations that occurred at the time of EPA’s inspection, Complainant believes that the alleged facts and violations at issue in Counts 1, 2, 3, 4, and 6 have continued to the present.

For Paragraph 2, Respondent in effect denies subsequent allegations in the Amended Complaint. Therefore, Complainant's response will be to Respondent's specific denials of those subsequent allegations.

For Paragraph 3, Respondent's Answer contains a denial but the matter in question (Respondent's option to file an Answer and request a hearing pursuant to Section VIII) is no longer in dispute.

For Paragraph 4, Respondent claims no knowledge of whether Complainant has notified Massachusetts of this enforcement action. Complainant believes that this matter is not in dispute but responds that the notice was given.

Section II of the Amended Complaint – Nature of Action (Paragraph 5)

Nothing is in dispute in this Section.

Section III of the Amended Complaint – Statutory and Regulatory Framework (Paragraphs 6-12)

Nothing is in dispute in this Section.

Section IV of the Amended Complaint – EPA's General Allegations (Paragraphs 13-25)

For Paragraph 17, Respondent admits that its Facility includes "storage units" for solvents, acids, and reactants used in batch chemical production, but denies that these materials are wastes or hazardous wastes. In effect, Respondent is stating that it does not use "wastes" or "hazardous wastes" in its batch chemical processes. Complainant believes there is no dispute here but will demonstrate if necessary that the Facility includes "storage areas" for hazardous wastes, including used waste solvents, acids, and reactants, and that these hazardous wastes result from Respondent's batch chemical production operations.

For Paragraph 20.b, Respondent denies that receiver tanks S-505, S-507, S-526, S-503A, S-545, and S-502A are used to collect materials from a single condensate receiver, and states that the receivers are used to collect materials from various condensers. Further, Respondent states that Complainant's characterization of the material collected in these tanks as hazardous waste is a legal conclusion to which no response is required. Receiver tanks S-505 and S-507 are no longer at issue in this case because of the Partial CAFO. *See* Partial CAFO, Paragraph 11. Complainant will demonstrate that receiver tanks S-502A, S-503A, S-526, and S-545 (hereinafter, the "Receiver Tanks") collect materials from various condensers, and that at times the materials collected in these tanks are hazardous wastes.²

For Paragraph 21.a, Respondent admits that it maintained transfer hoses, valves, connectors, flex hoses, pumps, and pipe manifolds to transfer materials to and from the Receiver Tanks. Further, Respondent states that Complainant's characterization of the materials transferred using this equipment as hazardous waste is a legal conclusion to which no response is required. The Partial CAFO resolved Complainant's allegations pertaining to equipment used to transfer material from the Receiver Tanks to Tank S-535 (referred to in the Partial CAFO as "Mid-Stream Equipment") and from Tank S-535 to off-site shipment vehicles (referred to in the Partial CAFO as "Downstream Equipment"). *See* Partial CAFO, Paragraphs 6.b, 7, and 9. Thus, the only equipment still at issue are the hoses, valves, connectors, etc., that transfer materials to the Receiver Tanks from condensers (referred to in the Partial CAFO as "Upstream Equipment").

²In the Amended Complaint and the Answer, the term "Receiver Tanks" refers to the six receiver tanks (Tanks S-505, S-507, S-526, S-503A, S-545 and S-502A) originally pleaded in the Complaint. As explained in the main text, only four receiver tanks (Tanks S-502A, S-503A, S-526, and S-545) are still at issue in the case. Accordingly, for the purposes of this pre-hearing exchange, Complainant has defined these four tanks as the "Receiver Tanks," and the term is used throughout this narrative to refer only to those four tanks.

See Partial CAFO, Paragraphs 6.b, 7, and 9. Complainant will demonstrate that at times the materials transferred by the Upstream Equipment to the Receiver Tanks are hazardous wastes.

For Paragraph 23, which alleges among other things that Respondent accumulates hazardous waste in tanks and must comply with Subparts BB and CC, the Partial CAFO has narrowed the paragraph's issues in dispute to whether the Receiver Tanks are hazardous waste tanks that must comply with Subpart CC, and to whether the Upstream Equipment must comply with Subpart BB.

Section V of the Amended Complaint – RCRA Violations (Paragraphs 27-86)

General comment: For certain paragraphs in this Section, Complainant alleges that the Receiver Tanks are “hazardous waste tanks” or “contain hazardous waste” or are being “operated as hazardous waste storage tanks.” *See* Paragraphs 30, 32, 33, 42, 44, 69, and 84. In its Answer, Respondent states that these allegations are legal conclusions to which no response is required. Similarly, Complainant alleges in certain paragraphs that the Upstream Equipment associated with the Receiver Tanks contains or contacts hazardous wastes, and Respondent similarly states that these allegations are legal conclusions to which no response is required. *See* Paragraphs 48, 56, and 57. The issue of whether the Receiver Tanks and the Upstream Equipment contain or contact hazardous wastes is a core issue in dispute between the parties. Complainant will demonstrate that there are hazardous wastes in the Upstream Equipment and the Receiver Tanks because waste liquid solvents enter and travel through the Upstream Equipment into the Receiver

Tanks and then are transferred to hazardous waste storage Tank S-535 without being altered at any time by chemical processes.³

Count 1: Failure to Comply with Standards for the Storage of
Hazardous Waste in Tanks (Paragraphs 28-33)

This Count, which alleges that the Receiver Tanks are hazardous waste tanks that are not being managed as such, was not resolved by the Partial CAFO. *See* Partial CAFO, Paragraph 10. However, the Partial CAFO reduced the number of receiver tanks at issue in this Count from six tanks to four. *See* Partial CAFO, Paragraph 11(d). Accordingly, for this Count, the issues in dispute are whether the Receiver Tanks are subject to and in compliance with the requirements of federally-authorized hazardous waste tank regulations referenced by 310 C.M.R. § 30.343(1).

For Paragraph 30, see Complainant's general comment at the beginning of Section V above regarding whether the Receiver Tanks are operating as hazardous waste storage tanks.

For Paragraph 31.a - b, Complainant cannot determine from Respondent's answers whether Respondent is disputing the substance of EPA's allegations regarding Respondent's employees' statements, or simply claiming that it has no knowledge as to whether the statements were made to EPA's inspectors. If necessary, EPA inspector Richard Piligian's testimony will demonstrate that Respondent's employees' statements were accurately alleged.

For Paragraph 31.c, Respondent admits that some of the solvent held in the Receiver Tanks is transferred to Tank S-535 but denies that all the solvents are so transferred. This admission does not speak directly to Complainant's allegation that all solvent wastes held in the Receiver Tanks are transferred to Tank S-535. Complainant will demonstrate if necessary that all

³In the Partial CAFO, Tank S-535 is defined as the "Facility-Wide Hazardous Waste Tank." *See* Partial CAFO, Paragraph 6.a.

solvent wastes that are hazardous wastes held in the Receiver Tanks are transferred to Tank S-535.

For Paragraphs 32 and 33, see Complainant's general comment at the beginning of Section V above regarding whether the Receiver Tanks are hazardous waste tanks.

Count 2: Failure to Comply with Hazardous Waste Tank
Air Emission Standards (Subpart CC) (Paragraphs 34-44)

This Count alleges that eight hazardous waste storage tanks and air emission control equipment at the Facility were not complying with federal RCRA regulations at Subpart CC. The Partial CAFO has effectively reduced the alleged hazardous waste storage tanks at issue to the four Receiver Tanks. Accordingly, for this Count, the only issues in dispute are whether the Receiver Tanks (and any air emission controls directly associated with these tanks, *i.e.*, fixed roofs and closure devices) are subject to and in compliance with the requirements of Subpart CC, including 40 C.F.R. §§ 265.1083(b), 265.1085(c)(4), 265.1089(a) - (b), and 265.1090(a) - (b).

For Paragraph 42, see Complainant's general comment at the beginning of Section V above regarding whether the Receiver Tanks are operating as hazardous waste tanks.

For Paragraph 43, Complainant cannot determine from Respondent's answer whether Respondent is disputing the substance of EPA's allegations regarding Respondent's employee's statements, or simply claiming that it has no knowledge as to whether the statements were made to EPA's inspectors. If necessary, EPA inspector Richard Piligian's testimony will demonstrate that Respondent's employee's statements were accurately alleged.

For Paragraph 44, see Complainant's general comment at the beginning of Section V above regarding allegations that the Receiver Tanks are hazardous waste tanks. Complainant's allegation that Respondent failed to inspect, monitor, and document inspections of air emissions

control equipment refers to control equipment directly associated with the tanks, *i.e.*, fixed roofs and control devices, as referenced in Paragraph 36.

Count 3: Failure to Comply with Hazardous Waste Air Emissions Standards
(Subpart BB) for Labeling Subpart BB Equipment (Paragraphs 45-50)

As discussed above for Paragraph 21.a, the Partial CAFO resolved Complainant's allegations pertaining to certain categories of equipment allegedly subject to Subpart BB at the Facility. The only equipment allegedly subject to Subpart BB that is still at issue is referred to as the Upstream Equipment – that is, the hoses, valves, connectors, etc., that transfer materials to the Receiver Tanks from condensers. *See* Partial CAFO, Paragraphs 6.b, 7 and 9. Accordingly, for this Count, the issue in dispute is whether the Upstream Equipment associated with the Receiver Tanks is subject to and was properly labeled or marked in accordance with the requirements of Subpart BB at 40 C.F.R § 265.1050(c).

For Paragraph 48, see Complainant's general comment at the beginning of Section V above regarding allegations that the Upstream Equipment contains or contacts hazardous wastes. In addition, Complainant alleges in Paragraph 48 that the hazardous wastes had "organic concentrations of at least 10% by weight." (The same allegation appears in Paragraphs 25 and 56.) Complainant cannot determine from Respondent's answers whether Respondent is disputing that the Upstream Equipment contained or contacted hazardous waste material with organic concentrations of at least 10% by weight. If necessary, Complainant will demonstrate that these hazardous waste materials had organic concentrations of at least 10% by weight.

For Paragraph 49, Respondent claims no knowledge as to whether EPA's inspectors observed that certain equipment was not marked to readily distinguish it from other equipment. Complainant cannot determine from Respondent's answer whether Respondent is disputing that

the Upstream Equipment in fact was not so marked. If necessary, Complainant will demonstrate that the Upstream Equipment was not labeled or marked in accordance with Subpart BB at 40 C.F.R. § 265.1050(c).

Count 4: Failure to Comply with Hazardous Waste Air Emissions Standards
(Subpart BB) for Monitoring Valves in Light Liquid Service, Gas/Vapor
Service, Pumps and Flanges (Paragraphs 51-59)

For this Count, the Partial CAFO has effectively limited the parties' dispute to whether the Upstream Equipment associated with the Receiver Tanks is subject to and was monitored in accordance with the requirements of Subpart BB, including 40 C.F.R. §§ 265.1052(a)(1) - (2), 265.1057(a), and 265.1058(a).

For Paragraphs 56 and 57, see Complainant's general comment at the beginning of Section V above regarding whether the Upstream Equipment and Receiver Tanks contain hazardous wastes.

For Paragraph 58, Respondent claims that the paragraph refers to a "non-existent regulatory provision" and was vague and ambiguous, and thus claims no knowledge regarding the truth of the allegations therein. Complainant believes that the allegations in Paragraph 58 sufficiently identified the relevant citation (40 C.F.R. § 265.1064(g)(6), which was mis-cited as 40 C.F.R. § 1064(g)(6)) and the missing records at issue (records documenting that the equipment was used for less than 300 hours per year as provided by the cited exemption). Complainant cannot determine from Respondent's answer whether Respondent is disputing that it in fact had no such documentation. If necessary, Complainant will demonstrate that Respondent had no such documents exempting the Upstream Equipment from the monitoring requirements of Subpart BB.

Count 5: Failure to Comply with Hazardous Waste Air Emissions Standards (Subpart BB) for Open-Ended Valves and Lines (Paragraphs 60-64)

This count has been settled by the Partial CAFO and is no longer in dispute.

Count 6: Failure to Comply with Hazardous Waste Air Emissions Standards (Subpart BB) for Maintaining Records (Paragraphs 65-70)

For this Count, the Partial CAFO has effectively limited the parties' dispute to whether Subpart BB records were required for and were being kept for the Upstream Equipment associated with the Receiver Tanks.

For Paragraph 69, Respondent claims that the paragraph's allegations are vague and ambiguous, and thus claims it lacks knowledge to either admit or deny if it had certain records. Complainant believes that the allegations in Paragraph 69, taken together with the immediately preceding allegations in Paragraphs 67 - 68, sufficiently identified the records at issue that Respondent allegedly failed to keep pursuant to Subpart BB at 40 C.F.R. § 265.1064. Complainant cannot determine from Respondent's answer whether Respondent is disputing that it in fact had no such Subpart BB records for the Upstream Equipment. If necessary, Complainant will demonstrate that Respondent had no such records at the time of EPA's inspection.

Count 7: Failure to Comply with Subpart BB and CC Air Monitoring Methods (Paragraphs 71-77)

This count has been settled by the Partial CAFO and is no longer in dispute.

Count 8: Failure to Have an Adequate Training Program (Paragraphs 78-81)

This count has been settled by the Partial CAFO and is no longer in dispute.

Count 9: Failure to Conduct and Document Daily Inspections of Hazardous Waste Tanks (Paragraphs 82-86)

This count has been settled by the Partial CAFO and is no longer in dispute.

Section VI of the Amended Complaint – EPA’s Proposed Penalties (Paragraphs 87-91)

In its response to Paragraph 88, Respondent denies that the proposed penalties are appropriate and denies that they were calculated in accordance with EPA’s RCRA Civil Penalty Policy and relevant federal statutory and regulatory provisions. Complainant asserts that the proposed penalties are appropriate and were calculated in accordance with the RCRA Civil Penalty Policy and relevant statutory/regulatory provisions as demonstrated by Attachment 1 to the Amended Complaint, which provided a detailed explanation of EPA’s calculation of the proposed penalties for all claims at the time of filing, including claims that have since been resolved in the Partial CAFO. In this prehearing exchange, Complainant has included an Explanation of Penalty Calculation (Exhibit CX-5) that describes in detail the proposed penalties for all claims that remain in the case. EPA inspector Richard Piligian’s testimony regarding Complainant’s Exhibit CX-5 will further demonstrate the appropriateness of the proposed penalty.

Section VII of the Amended Complaint – Compliance Order (Paragraphs 92-106)

Since the parties’ present disputes are limited to the four Receiver Tanks and the Upstream Equipment, any final compliance order would likewise be limited to these same Receiver Tanks and Upstream Equipment. As noted above, Complainant believes that alleged facts and violations at issue in Counts 1, 2, 3, 4, and 6 have continued to the present, so a compliance order would be appropriate to address them.

Respondent’s Additional Defenses

Respondent’s Answer contains a number of general affirmative defenses (Defenses 2-27). Because these defenses are presented generally and not in response to specific allegations in the Amended Complaint, Complainant is not addressing them herein. Pursuant to the Prehearing

Order, if Respondent raises any of these affirmative defenses in its pre-hearing exchange, Complainant will address them in its rebuttal prehearing exchange. *See* Prehearing Order, Paragraphs 3.b and 4.

2(C). Factual Information and Supporting Documents Relevant to Penalty Assessment

The factual information relevant to the assessment of a penalty is contained in EPA's Explanation of Penalty Calculation (Exhibit CX-5). *See also* EPA's RCRA Inspection Report (Exhibit CX-1). The proposed penalty was calculated pursuant to the RCRA Civil Penalty Policy (Exhibit CX-6), as amended by EPA's Penalty Inflation Adjustment Memo (Exhibit CX-7).

2(D). Copies of EPA Guidance, Policies and Preamble Language Relied Upon By EPA

Complainant has included several guidance documents, policies, and preamble sections in its List of Exhibits in Section 1(B) above, and may cite to those documents in subsequent briefings, in questioning witnesses, or arguing the proposed penalty.

2(E). Explanation and Methodology Used to Calculate Penalty

Complainant determined the proposed penalty in accordance Section 3008(a)(3) of RCRA and with the method described in the RCRA Civil Penalty Policy (Exhibit CX-6), as amended by EPA's Penalty Inflation Adjustment Memo (Exhibit CX-7). Complainant's Explanation of Penalty Calculation, which describes the penalty calculations for this case (as narrowed by the Partial CAFO), is included as Complainant's Exhibit CX-5. For each violation, Complainant has assessed the potential for harm to health and the environment presented by that violation, the potential for harm to the regulatory program, and the extent of Respondent's deviation from the regulatory requirements. Each factor is assessed as being major, moderate, or minor. The combination of these assessments represents Complainant's views concerning the seriousness of each violation. In accordance with the RCRA Civil Penalty Policy, Complainant

also evaluated factors such as the economic benefit of noncompliance, history of noncompliance, ability to pay, the degree of willfulness or negligence, and any good faith efforts to comply.

Respectfully submitted,

December 18, 2020

Audrey Zucker
Enforcement Counsel

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complainant's Initial Prehearing Exchange, along with electronic copies of all exhibits and documents listed therein, was served on the 18th day of December 2020 in the following manner on the addressees listed below:

Copy by e-mail to:

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By OALJ E-Filing System:

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December 18, 2020

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