

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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In the Matter of :  
 : COMPLAINT, COMPLIANCE ORDER  
 : AND NOTICE OF OPPORTUNITY  
 : FOR HEARING  
 :  
EPA Identification Number :  
 :  
 : Docket No.  
Respondent. :  
 :  
Proceeding Under Section 3008 :  
of the Resource Conservation :  
and Recovery Act, 42 U.S.C. :  
Section 6928, as amended. :  
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COMPLAINT

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

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 \_\_\_\_\_ or the "Respondent"), has violated requirements of RCRA and hazardous waste regulations concerning the management of hazardous waste.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that the Administrator of the United States Environmental Protection Agency ("EPA") may, if certain criteria are met, authorize a state to operate a hazardous waste program in lieu of the federal program. The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986 and authorization for many of the HSWA requirements on May 22, 1992. Effective October 1997, the State of New York received final authorization to administer most of its hazardous waste program. Section 3008 of the Act, 42 U.S.C. § 6928, authorizes EPA to enforce state regulations that EPA has approved. EPA still retains primary responsibility for certain requirements promulgated pursuant to HSWA.

The Complainant in this proceeding, George Pavlou, Director of the Division of Enforcement and Compliance Assistance, of the EPA, Region 2, who has been duly delegated the authority to institute this action, upon information and belief, hereby alleges:

General Allegations

1. The Respondent is the (hereinafter or "Respondent").
2. The Respondent was incorporated in the State of New Jersey on or about October 24, 1901.
3. The Respondent (or its legal predecessor), since at least 1880, has been doing business in the State of New York.
4. The Respondent is the owner and operator of a large multi-product manufacturing facility, known as Park, which is located at (hereinafter the "Facility").
5. The Respondent is a "person", as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
6. The Respondent manufactures photographic films, X-Ray films, imaging products and specialty chemicals associated with the development of films at its facility.
7. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, the Respondent, in August 1980, notified EPA that it conducted activities involving "hazardous waste" at the Facility (the "notification").
8. In response to the Respondent's notification, EPA, on or about August 18, 1980, provided the Respondent with EPA identification number
9. The hazardous wastes generated at the Respondent's Facility have included, without limitation, ignitable wastes (D001), corrosive wastes (D002), reactive wastes (D003), waste exhibiting the characteristic of toxicity (D005 - D040), wastes from nonspecific sources (F wastes), wastes from specific sources (K wastes), discarded commercial chemical products including acute

wastes (P wastes), and discarded commercial chemical products including manufacturing chemical intermediates (U wastes).

10. The Respondent is, and has been, a "generator" of "hazardous waste" as those terms are defined in 40 C.F.R. § 260.10.
11. The Respondent, pursuant to 40 C.F.R. § 270.13, submitted a Part A permit application to EPA for its facility located at \_\_\_\_\_ on or about November 19, 1980.
12. The Respondent, pursuant to 40 C.F.R. § 270.14, submitted a Part B permit application to EPA for its facility located at \_\_\_\_\_ on or about August 1983.
13. The EPA, based upon the Respondent's Parts A and B permit application, and pursuant to Section 3005 of the Act, 42 U.S.C. § 6925, issued a RCRA permit (No. NYD 980592497) to the Respondent for the operation of a hazardous waste treatment, storage and disposal facility at Kodak Park.
14. The EPA issued RCRA permit became effective on April 5, 1986 for a ten year period.
15. On June 21, 1990, the EPA promulgated final regulations (55 Fed. Reg. 25455) governing organic air emission standards for process vents and equipment leaks from treatment, storage and disposal facilities (40 C.F.R. Parts 264 and 265 Subparts AA and BB).
16. The organic air emission standards, referenced above in paragraph "15", became effective on December 21, 1990.
17. On December 6, 1994, the EPA promulgated final regulations (59 Fed. Reg. 62896) governing organic air emission standards for tanks, surface impoundments and containers from hazardous waste generators and treatment, storage and disposal facilities (40 C.F.R. Parts 264 and 265 Subpart CC).
18. The organic air emission standards, referenced above in paragraph "17", which also amended the permitting requirements of 40 C.F.R. Part 270, were scheduled to take effect on June 25, 1995 but instead became effective on December 6, 1996.

19. The Respondent's EPA issued RCRA permit, referenced above in paragraph "14", expired on April 5, 1996.
20. Pursuant to 40 C.F.R. §§ 270.51(a) and (d), the Respondent, upon the filing of a timely and complete permit application, may continue to operate its facility under the terms and conditions of the expired EPA-issued permit until the appropriate permitting Agency has issued a new permit.
21. The Respondent, on or about September 15, 1995, pursuant to 6 New York Code of Rules and Regulations ("6 NYCRR") Part 373 filed a permit application with the New York State Department of Environmental Conservation ("NYSDEC") to continue to operate its hazardous waste treatment, storage and disposal facility at
22. The Respondent, on or about September 15, 1995, pursuant to 40 C.F.R. §§ 270.10(a), (h), and 270.30(b), filed a permit application regarding the air emission standards set forth in the Subparts BB and CC of 40 C.F.R. 265 with the EPA to continue to operate its hazardous waste treatment, storage and disposal facility at
23. Pursuant to 40 C.F.R. § 270.4(a)(4), the Respondent, from at least December 6, 1996, has been required to operate its facility in accordance with the regulations promulgated under air emission standards of Subparts BB or CC of Part 265.
24. The Respondent in a letter to the Regional Administrator of EPA Region 2, dated January 8, 1997, stated that it "owns equipment at its facility . . . which contains organic hazardous waste and is newly subject to 40 C.F.R. Part 265 Subpart EB as a consequence of the recent amendments to the applicability of this subpart (265.1050(b)(3) added by 61 FR 59970, 11/25/96."
25. On May 25, May 26, and May 27, 1999, representatives of EPA conducted a Compliance Evaluation Inspection ("the May inspections") of the Facility.
26. During the May inspections, a Facility representative stated that the facility had equipment that transported hazardous waste with organic concentrations of at least

ten (10%) percent by weight and this equipment was subject to the RCRA Air Emissions-Subpart BB regulations.

27. During the May inspections of Building 120, a Facility representative identified equipment in light liquid service (mostly solvents) that was subject to the Subpart BB regulations.
28. During the May inspections, a Facility representative stated that the pumps and valves in Building 303 used in transporting hazardous waste(s) with an organic concentration of at least ten percent by weight from the reactor(s) through a single pipe through manifold system(s) to a hazardous waste storage unit had not been monitored or inspected in accordance with the requirements of 40 C.F.R. §§ 265.1052(a)(1) and 40 C.F.R. 265.1057(a)(1) because believed these pumps and valves were exempt from the Subpart BB requirements.
29. On or about July 6, 1999, EPA, pursuant to § 3007 of the Act, 42 U.S.C. § 6927, sent an Information Request Letter ("the July Request") to the Respondent seeking information regarding, inter alia, its generation of hazardous waste and its compliance with the requirements of RCRA Subpart BB and CC regulations.
30. The Respondent filed its answer to the July Request on August 12, 1999 ("the August Response") and supplemented that response in a letter dated January 28, 2000 ("the January Supplement").
31. On or about November 5, 1999, EPA, pursuant to § 3007 of the Act, 42 U.S.C. § 6927, sent a follow-up Information Request Letter (the "November Request") to the Respondent seeking information regarding, inter alia, its generation, treatment, storage and disposal of hazardous waste and its compliance with requirements of RCRA Subpart BB regulations.
32. The Respondent filed its answer to the November Request on December 21, 1999 ("the December Response").

**Count 1 - Failure to Timely Perform Initial  
Performance Test**

33. Complainant realleges each allegation contained in paragraphs "1" through "32", inclusive, as if fully set forth herein.
34. Pursuant to 40 C.F.R. § 265.1061(c)(1), a facility electing to comply with the alternative standards for valves in gas/vapor or in light liquid services must perform an initial performance test of all of its valves within a one week period.
35. The Respondent in a letter dated July 11, 1995 to the EPA Regional Administrator stated that it had elected to comply with the alternative monitoring standards listed at 40 C.F.R. § 265.1061.
36. The Respondent, in its letter of January 8, 1997, stated "[it] elected to comply with the alternate standards for valves in gas/vapor or in light service: percentage of valves allowed to leak . . . [and] [t]his letter serves as the notification of this election per the requirements of 265.1061(b)(1) as well as a completion of a performance test December 2-5, 1996 according to the requirements of 265.1061(c)."
37. At the time of the May inspections, a Facility representative stated that the two hundred sixty (260) valves in Building 120, which were being monitored under the alternative standards listed at 40 C.F.R. § 265.1061, had not been monitored during the initial performance tests conducted during the period of December 2 - 5, 1996.
38. The Respondent in its August Response admitted that the monitoring of the two hundred and sixty valves (260) valves in Building 120 had not been completed until September 17, 1997.
39. In its August Response, the Respondent further admitted that in addition to the two hundred sixty (260) valves in Building 120, there were one hundred thirty-four (134) valves in Building 322, there were twenty-seven (27) valves in Building 119, there were fifteen (15) valves in Building 148, there were six (6) valves in Building 302, there were two (2) valves in Building 304 and there were two (2) valves in Building 325 that

had elected to monitor under the alternate standards of 40 C.F.R. § 265.1061 and Respondent had not monitored these valves during the initial performance tests conducted during the period of December 2 - 5, 1996.

40. The Respondent failed to conduct an initial performance test during the period December 2 - December 5, 1996 on the two hundred sixty (260) valves in Building 120, the one hundred thirty-four (134) valves in Building 322, the twenty-seven (27) valves in Building 119, the fifteen (15) valves in Building 148, the six (6) valves in Building 302, the two (2) valves in Building 304 and the two (2) valves in Building 325.
41. The Respondent's failure to timely perform the initial performance test on the four hundred forty-six valves as alleged above in paragraph "40" is a violation of 40 C.F.R. § 265.1061(c)(1).

**Count 2 - Failure to Monitor Pumps Used  
in Transporting Organic Hazardous Waste**

42. Complainant realleges each allegation contained in paragraphs "1" through "32", inclusive, as if fully set forth herein.
43. Pursuant to 40 C.F.R. § 265.1052(a)(1) each pump that transports hazardous waste with an organic concentration of at least ten percent by weight and is in light liquid service shall be monitored monthly to detect leaks by methods specified in 40 C.F.R. Part 265 Subpart BB.
44. During the May inspections, pumps in Building 303 were used in transporting hazardous waste(s) with an organic concentration of at least ten percent by weight from the reactor(s) through a single pipe through manifold system(s) to a hazardous waste storage unit.
45. During the May inspections, a Facility representative stated that the pumps in Building 303 had not been monitored in accordance with the requirements of 40 C.F.R. § 265.1052(a)(1).
46. The Respondent in its December Response provided a list of at least one hundred seventy-one (171) pumps in seventy-three (73) locations, including but not limited

to Building 303, that were used in transporting organic hazardous waste(s) with an organic concentration of at least ten percent by weight from the reactor(s) through a single pipe through manifold system(s) to various hazardous waste storage units, all of which pumps had not been monitored.

47. Since at least December 1996, the Respondent failed to monitor on a monthly basis at least one hundred seventy-one (171) pumps situated in seventy-three (73) locations, including but not limited to Building 303, that were used in transporting organic hazardous waste(s) with an organic concentration of at least ten percent by weight from the reactor(s) through a single pipe through manifold system(s) to various hazardous waste storage units as required by the monitoring requirements of 40 C.F.R. § 265.1052 (a)(1).
48. The Respondent's failure to monitor, on a monthly basis, the pumps used in transporting organic hazardous waste(s) as alleged above in paragraph "47" is a violation of 40 C.F.R. § 265.1052(a)(1).

**Count 3 - Failure to test Pumps Used  
in Transporting Organic Hazardous Waste**

49. Complainant realleges each allegation contained in paragraphs "1" through "32", inclusive, as if fully set forth herein.
50. Pursuant to 40 C.F.R. § 265.1052(e)(3), each pump that transports hazardous waste with an organic concentration of at least ten percent by weight and is in light liquid service and designated for no detectable emissions shall be tested for compliance with paragraph (e)(2) of this section initially upon designation and annually thereafter.
51. The Respondent in its January Supplement stated that four (4) portable pumps located in Building 218 were subject to the Subpart BB regulations and designated for no detectable emissions.
52. The Respondent failed to test these four portable pumps upon their designation for compliance with the no detectable emissions standards set forth in 40 C.F.R. § 265.1052(e)(2).



53. The Respondent's failure to test the four portable pumps upon their designation for no detectable emissions as alleged in paragraph "52" is a violation of 40 C.F.R. § 265.1052(e)(3).

**Count 4 - Failure to Monitor Valves  
or Comply With Alternative Standard**

54. Complainant realleges each allegation contained in paragraphs "1" through "32", inclusive, as if fully set forth herein.
55. Pursuant to 40 C.F.R. § 265.1057(a) each valve in light liquid service shall be monitored monthly to detect leaks by methods specified in Subpart BB.
56. Pursuant to 40 C.F.R. § 265.1061(a), an owner/operator subject to 40 C.F.R. § 265.1057 may elect to have all valves comply with an alternative standard. If an owner/operator elects this alternative standard, the owner/operator must comply with the requirements of 40 C.F.R. § 265.1061(b) which includes an initial performance test.
57. During the May inspections, valves in Building 303 were used in transporting hazardous waste(s) with an organic concentration of at least 10% by weight from the reactor(s) through a single pipe through manifold system(s) to a hazardous waste storage unit.
58. During the May inspections, a Facility representative stated that the valves in Building 303 had not been monitored in accordance with the requirements of 40 C.F.R. § 265.1057(a)(1).
59. The Respondent in its December Response provided a list of at least one hundred forty-six (146) valves from seventy-three (73) locations, including but not limited to Building 303, used to transport organic hazardous waste(s) from the reactor(s) through a single pipe through manifold systems to hazardous waste storage units, all of which valves had not been monitored.
60. The Respondent failed to perform an initial performance test for the alternative standard on the valves referred to in paragraphs "56", "58" and "59".

61. Since at least December 1996, the Respondent failed to monitor on a monthly basis, as required by the monitoring requirements of 40 C.F.R. § 265.1057(a), at least one hundred forty-six (146) valves used to transport organic hazardous waste(s) from the reactor(s) through a single pipe through manifold systems to hazardous waste storage units.
62. The Respondent's failures as alleged above in paragraphs "61" and "60" is a violation of 40 C.F.R. § 265.1057 or, in the alternative, a violation of 40 C.F.R. § 265.1061.

**Count 5 - Failure to Inspect Pumps Used  
in Transporting Organic Hazardous Waste**

63. Complainant realleges each allegation contained in paragraphs "1" through "32", inclusive, as if fully set forth herein.
64. Pursuant to 40 C.F.R. § 265.1052(a)(2), each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquid dripping from the pump seal.
65. During the May inspections, pumps in Building 303 were used in transporting hazardous waste(s) with an organic concentration of at least 10% by weight from the reactor(s) through a single pipe through manifold system(s) to a hazardous waste storage unit.
66. During the May inspections, a Facility representative stated that the pumps in Building 303 had not been inspected in accordance with the requirements of 40 C.F.R. § 265.1052(a)(1).
67. The Respondent in its December Request provided a list of at least 171 pumps from seventy-three (73) locations, including but not limited to Building 303, that were used in transporting organic hazardous waste(s) with an organic concentration of at least 10% by weight from the reactor(s) through a single pipe through manifold system(s) to hazardous waste storage units, all of which pumps had not been inspected.

68. Since at least December 1996, the Respondent failed to check by visual inspection each calendar week for indications of liquid dripping from the seal of each pump situated in the seventy-three (73) locations, including but not limited to Building 303, that were used in transporting organic hazardous waste(s) with an organic concentration of at least 10% by weight from the reactor(s) through a single pipe through manifold system(s) to hazardous waste storage units as required by the monitoring requirements of 40 C.F.R. § 265.1052(a)(2).
69. The Respondent's failure to conduct visual inspection each calendar week for indications of liquid dripping from the seal of each pump as alleged above in paragraph "68" is a violation of 40 C.F.R. § 265.1052(a)(2).

**Count 6 - Failure to Make Required Determination That Containers Were Operating at No Detectable Emissions**

70. Complainant realleges each allegation contained in paragraphs "1" through "32", inclusive, as if fully set forth herein.
71. Pursuant to 40 C.F.R. § 265.1087(b)(iii), containers having a design capacity of greater than 0.46 cubic meters that is in light material service shall control air pollution control emissions in accordance with the container level 2 standards specified in paragraph (d) of this section.
72. Pursuant to 40 C.F.R. § 265.1087(d)(ii), containers must operate with no detectable emissions as determined in paragraph (g) of this section.
73. Pursuant to 40 C.F.R. § 265.1087(g), to determine compliance with the no detectable emissions requirements, the procedures specified in 40 C.F.R. § 265.1084(d) shall be used.
74. During the May inspections, there were two containers of a capacity greater than 0.46 cubic meters located outside of Building 119 storing organic hazardous waste(s) of Volatile Organic Concentration of 500 parts per million ("p.p.m.") or greater.

75. At the time of the May inspections, a Facility representative stated, with respect to the two containers referenced above in paragraph "74", that had elected to monitor these containers as required under the Subpart CC Container Standards, Level 2 requirements.
76. The Respondent in its August Response stated that, in addition to the two containers outside Building 119, there were twenty-four (24) other containers situated on the facility, all of which containers Respondent had elected to monitor as required under the Subpart CC Container Standards, Level 2 requirements. Respondent also indicated that all of these containers "[had] not [been] monitored as required by the regulation".
77. The two containers situated outside Building 119 and the twenty-four (24) other containers were all of a design capacity greater than 0.46 cubic meters and stored organic hazardous waste in light liquid service with a Volatile Organic Concentrations of at least 500 p.p.m.
78. Respondent did not determine whether the containers were in compliance with the no detectable emissions requirements of 40 C.F.R. § 265.1087 as specified in 40 C.F.R. § 265.1084(d).
79. The Respondent's failure to determine that the containers referred to above in paragraph "77" were operating at no detectable emissions as specified in 40 C.F.R. § 264.1084(d) is a violation of 40 C.F.R. § 265.1087.

## II. PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements". To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's 1990 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address:

<http://es.epa.gov/oeca/ore/red/red2.html>. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. EPA has issued the Civil Monetary Penalty Inflation Adjustment Rule under which violations that have occurred on or after January 31, 1997 are subject to a new statutory maximum civil penalty. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for such violations is \$27,500 per day of violation. 40 C.F.R. Part 19 (61 Fed. Reg. 69360 [December 31, 1996]).

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

In view of the above-cited violations, and pursuant to the authority of Section 3008 of RCRA, 42 U.S.C. § 6928, Complainant herewith proposes the assessment of a civil penalty in the amount of three hundred three thousand sixty-four (\$303,064) dollars against the Respondent as follows:

Count/ Counts	Citation	Violation	Amount
One	40 C.F.R. § 265.1061(c) (1)	Failure To Timely Perform Initial Performance Test	\$33,000
Two, Three and Four	40 C.F.R. § 265.1052(a) (1)  40 C.F.R. § 265.1052(e)  40 C.F.R. §265.1057 or, in the alternative, 40 C.F.R. § 265.1061	Failure to Monitor Pumps Used in Transporting Organic Hazardous Waste  Failure to Test Pumps Used in Transporting Organic Hazardous Waste  Failure to Monitor Valves or Comply with Alternative Standard	\$104,495
Five	40 C.F.R. § 265.1052(a) (2)	Failure to Inspect Pumps Used in Transporting Organic Hazardous Waste	\$136,969
Six	40 C.F.R. § 265.1087	Failure To Make Required Determination that Containers Were Operating at No Detectable Emissions	\$28,600
TOTAL			\$303,064

### III. COMPLIANCE ORDER

Based on the foregoing and pursuant to the authority of Section 3008 of the Act, 42 U.S.C. § 6928, Complainant hereby issues the following Compliance Order against the Respondent.

Within sixty (60) days of the effective date of this Compliance Order, the Respondent shall cure the violations alleged in the previous section and come into compliance with all the applicable requirements under 40 C.F.R. 265 Subparts BB and CC at each of the locations referenced in this Complaint.

This Compliance Order shall take effect with respect to the Respondent sixty (60) days after service of the Order, unless by that date the Respondent has requested a hearing pursuant to 40 C.F.R. Section 22.15. See 42 U.S.C. Section 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise release the Respondent from liability for any violations at its 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 \$27,500 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA or the State of New York.

#### 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 ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS", and which are codified at 40 C.F.R. Part 22 (2000). A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

##### A. Answering The Complaint

Where the 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 the Respondent is entitled to judgment as a matter of law, the 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:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17th floor  
New York, New York 10007-1866

The 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).

The 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 the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where the 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 the Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether the Respondent requests a hearing. 40 C.F.R. § 22.15(b).

The Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude the 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 the Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, the Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to compliance orders in the Complaint, unless the Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such orders are served, such orders shall automatically become final. 40 C.F.R. § 22.37

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



### C. Failure To Answer

If the 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 the 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, the Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by the Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by the Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by the Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against the Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against the 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 the Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), the Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], the Respondent must do so "within thirty (30) days after the initial decision is served upon the parties". 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.07(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 the 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, the Respondent may comment on the charges made in this complaint, and the Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions the 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 the Respondent's ability to continue in business and/or (4) any other special facts or circumstances the 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 the Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if the Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. The Respondent is referred to 40 C.F.R. § 22.18.

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

Gary H. Nurkin, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, Room 1623  
New York, New York 10007-1866  
(212) 637-3195

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

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

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

The Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. the 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, the Respondent wishes not to contest the compliance order in the Complaint and wants to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, the Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Date: *September 29, 2000*

Complainant: *George Pavlou*  
George Pavlou, Director  
Division of Enforcement  
and Compliance Assistance  
Environmental Protection  
Agency Region 2

To:

cc: Sal Carlomagno, Chief  
Hazardous Waste Compliance and Enforcement  
New York State Dept., Environmental Conservation

bcc: Nina Habib Spencer, (2CD-PAT)  
George Meyer, (2DECA-RCB)  
Abdool Jabar, (DECA-RCB)  
Gary H. Nurkin, (2ORC-WTS)  
William Sawyer, (2ORC-WTS)  
Hanna Maciejko, (2DEPP-RPB)

Certificate of Service

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity of Hearing ("Complaint"), bearing docket Number RCRA 02-2000-7109 and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (64 Federal Register 40176 [July 23, 1999]) by certified mail, return receipt requested to

I hand carried the original and a copy of the foregoing Complaint to the Office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: New York, New York

10-2, 2000

*Chris Ahearn*

PENALTY COMPUTATION WORKSHEET - COUNT ONE

Company Name:

Address:

Violation: 40 C.F.R. § 265.1061(c)(1) - Failure  
to Timely Perform Initial Performance Test.

1.	Gravity based penalty from matrix . . . . .	<u>\$16,500</u>
	(a) Potential for harm : . . . . .	<u>Major</u>
	(b) Extent of Deviation . . . . .	<u>Moderate</u>
	(c) Multiple Violations (2).....	<u>\$33,000</u>
2.	Select an amount from the appropriate multi-day matrix cell.....	<u>N/A</u>
3.	Multiply line 2 by number of days of violation minus 1 [or other number, as appropriate (provide narrative explanation)].....	<u>N/A</u>
4.	Add lines 1(c) and 3 . . . . .	<u>\$33,000</u>
5.	Percent increase/decrease for good faith . . . . .	<u>N/A</u>
6.	Percent increase for willfulness/negligence . . . . .	<u>N/A</u>
7.	Percent increase for history of noncompliance . . . . .	<u>N/A</u>
8.	Total lines 5 through 7 . . . . .	<u>N/A</u>
9.	Multiply line 4 by line 8 . . . . .	<u>N/A</u>
10.	Calculated economic benefit . . . . .	<u>N/A</u>
11.	Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint . . . . .	<u>\$33,000</u>

\* Additional downward adjustments, where substantiated by  
reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

## 1. Gravity Based Penalty

(a) Potential for Harm: The "Potential for Harm" was "Major" because the Respondent failed to monitor four hundred forty-six (446) valves during its initial monitoring period and the delay in monitoring these valves substantially increased the risk of releases of organic hazardous waste to the environment.

(b) Extent of Deviation: The "Extent of Deviation" was determined to be "Moderate" because as of September 1997, the Respondent appears to have complied with the initial monitoring requirements for all valves identified in Count 1.

The low end of the range was selected because the valves that were not monitored were located indoors which reduced the possibility of releases of hazardous constituents to the environment.

(c) Multiple/Multi-day: The failure to have conducted the initial performance tests was a one time occurrence that occurred when the facility failed to conduct its performance tests on the four hundred forty-six (446) valves during the week of December 2 - 5, 1996. However, because the majority of these valves (394 valves) were located in two buildings, Building 120 (260 valves) and Building 322 (134 valves), Respondent's failure to conduct the initial performance tests is considered to be two separate violations.

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

Good faith: EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

Willfulness/Negligence: Not applicable

History of Compliance: Not applicable

Ability to Pay: Not applicable

Environmental Project: Not applicable

Other Unique Factors: Not applicable

3. Economic Benefit: The economic benefit derived from this violation was determined to be less than \$2,500.

4. Recalculation of Penalty Based on New Information: N/A

PENALTY COMPUTATION WORKSHEET - COUNTS TWO, THREE AND FOUR

Company Name:

Address:

Violations: 40 C.F.R. §§ 265.1052(a)(1) - Failure to Monitor Pumps Used in Transporting Organic Hazardous Waste, 40 C.F.R. §§ 265.1052(e) - Failure to Test Pumps used in Transporting Organic Hazardous Waste and 40 C.F.R. §265.1057 or, in the alternative, 40 C.F.R. § 265.1061 - Failure to Monitor Valves or Comply with Alternative Standard.

1.	Gravity based penalty from matrix . . . . .	<u>\$16,500</u>
	(a) Potential for harm . . . . .	<u>Major</u>
	(b) Extent of Deviation . . . . .	<u>Moderate</u>
2.	Select an amount from the appropriate multi-day matrix cell . . . . .	<u>\$825</u>
3.	Multiply line 2 by number of days of violation minus 1 [or other number, as appropriate (provide narrative explanation)] . . . . .	<u>\$23,925</u>
4.	Add lines 1 and 3 . . . . .	<u>\$40,425</u>
5.	Percent increase/decrease for good faith . . . . .	<u>N/A</u>
6.	Percent increase for willfulness/negligence . . . . .	<u>N/A</u>
7.	Percent increase for history of noncompliance . . . . .	<u>N/A</u>
8.	Total lines 5 through 7 . . . . .	<u>N/A</u>
9.	Multiply line 4 by line 8 . . . . .	<u>N/A</u>
10.	Calculated economic benefit . . . . .	<u>\$64,070</u>
11.	Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint . . . . .	<u>\$104,495</u>

\* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.



NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

## 1. Gravity Based Penalty

(a) Potential for Harm: The "Potential for Harm" was "Major" because the Respondent, since at least December 1996, failed to monitor, on a monthly basis, a substantial number of pumps and valves subject to the Subpart BB requirements. The facility also failed to test four portable pumps designated for no detectable emissions. This failure to monitor and test the equipment substantially increased the risk of releases of organic hazardous waste to the environment.

(b) Extent of Deviation: The "Extent of Deviation" was determined to be "Moderate" because, aside from the four portable pumps in Building 218 and the pumps and valves situated in the seventy-three (73) locations, including but not limited to Building 303, the Respondent did comply with the monitoring and testing requirements of Subpart BB for the remaining pumps and valves, subject to these requirements, at its facility.

The low point of the matrix was selected because the Respondent's failure to comply was apparently based upon its mistaken belief that its equipment was part of the manufacturing process and therefore exempt from the RCRA regulations.

(c) Multiple/Multi-day: The Respondent failed to perform the monthly monitoring of the pumps and valves subject to the air emission standards of Subpart BB. The effective date for compliance with these regulations was December 6, 1996. The number of monthly monitoring that should have been done from the effective date of the regulations to at least the May 25, 1999 inspection was twenty-nine (29). We used our discretion in selecting the date of the inspection as the end date in the calculation of multi-day penalties.

The low point of the Gravity Based Penalty Matrix cell range was selected because EPA considered the Respondent's explanation for its failure to comply with the Subpart BB requirements.

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

Good faith: EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

Willfulness/Negligence: Not applicable

History of Compliance: Not applicable

Ability to Pay: Not applicable  
Environmental Project: Not applicable  
Other Unique Factors: Not applicable

3. Economic Benefit: The economic benefit derived from these violations was determined to be \$61,715

4. Recalculation of Penalty Based on New Information: N/A

PENALTY COMPUTATION WORKSHEET - COUNT FIVE

Company Name:

Address:

Violation: 40 C.F.R. §§ 265.1052(a)(2) - Failure to  
Inspect Pumps Used in Transporting Organic  
Hazardous Waste.

1.	Gravity based penalty from matrix . . . . .	<u>\$16,500</u>
	(a) Potential for harm . . . . .	<u>Major</u>
	(b) Extent of Deviation . . . . .	<u>Moderate</u>
2.	Select an amount from the appropriate multi-day matrix cell.....	<u>\$825</u>
3.	Multiply line 2 by number of days of violation minus 1 [or other number, as appropriate (provide narrative explanation)] . . . . .	<u>\$20,625</u>
4.	Add line 1 and 3 . . . . .	<u>\$37,125</u>
5.	Percent increase/decrease for good faith . . . . .	<u>N/A</u>
6.	Percent increase for willfulness/negligence . . . . .	<u>N/A</u>
7.	Percent increase for history of noncompliance . . . . .	<u>N/A</u>
8.	Total lines 5 through 7 . . . . .	<u>N/A</u>
9.	Multiply line 4 by line 8 . . . . .	<u>N/A</u>
10.	Calculated economic benefit . . . . .	<u>\$99,844</u>
11.	Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.....	<u>\$136,969</u>

\* Additional downward adjustments, where substantiated by  
reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

## 1. Gravity Based Penalty

(a) Potential for Harm: The "Potential for Harm" was "Major" because the Respondent, since at least December 1996, failed to inspect, on a weekly basis, a substantial number of pumps subject to the subpart BB requirements and this failure to inspect substantially increased the risk of releases of organic hazardous waste to the environment.

(b) Extent of Deviation: The "Extent of Deviation" was determined to be "Moderate" because, aside from the pumps situated in Building 303 and the pumps situated in the seventy-three (73) other locations, the Respondent did comply with the inspection requirements of Subpart BB for all remaining pumps, subject to these requirements, at its facility.

The low point of the matrix was selected because the Respondent's failure to comply was based upon its apparent belief that its equipment was part of the manufacturing process and therefore exempt from the RCRA regulations.

(c) Multiple/Multi-day: The Respondent failed to perform the weekly inspections of the pumps subject to the air emission standards of Subpart BB. The effective date for compliance with these regulations was December 6, 1996. We used our discretion in considering only the violations falling within a 180 day period in the calculation of multi-day penalties. The number of weekly inspections that should have been done in a 180 days was twenty-six (26).

The low point of the Gravity Based Penalty Matrix cell range was selected because EPA considered the Respondent's explanation for its failure to comply with the Subpart BB requirements.

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

Good faith: EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

Willfulness/Negligence: Not applicable

History of Compliance: Not applicable

Ability to Pay: Not applicable

Environmental Project: Not applicable

Other Unique Factors: Not applicable

3. Economic Benefit: The economic benefit derived from these violations was determined to be \$96,177

4. Recalculation of Penalty Based on New Information: N/A

PENALTY COMPUTATION WORKSHEET - COUNT SIX

Company Name:

Address:

Violation: 40 C.F.R. § 265.1087(b)(iii) - Failure to  
 Make Required Determination that Containers  
 Were Operating at No Detectable Emissions.

1.	Gravity based penalty from matrix . . . . .	<u>\$1,100</u>
	(a) Potential for harm . . . . .	<u>Minor</u>
	(b) Extent of Deviation . . . . .	<u>Moderate</u>
	(c) Multiple Violations (26 Tanks).....	<u>\$28,600</u>
2.	Select an amount from the appropriate multi-day matrix cell.....	<u>N/A</u>
3.	Multiply line 2 by number of days of violation minus 1 [or other number, as appropriate (provide narrative explanation)].....	<u>N/A</u>
4.	Add lines 1(c) and 3 . . . . .	<u>\$28,600</u>
5.	Percent increase/decrease for good faith . . . . .	<u>N/A</u>
6.	Percent increase for willfulness/negligence : . . . .	<u>N/A</u>
7.	Percent increase for history of noncompliance . . . .	<u>N/A</u>
8.	Total lines 5 through 7 . . . . .	<u>N/A</u>
9.	Multiply line 4 by line 8 . . . . .	<u>N/A</u>
10.	Calculated economic benefit . . . . .	<u>N/A</u>
11.	Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint . . . . .	<u>\$28,600</u>

\* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

## 1. Gravity Based Penalty

(a) Potential for Harm: The "Potential for Harm" was determined to be "Minor". Although the Respondent failed to demonstrate that the containers were operating at no detectable emissions, the hazardous waste stored in those containers was sent for on-site incineration or off-site for final disposal as soon as they were filled. Because these twenty-six (26) containers were quickly filled, they were not holding hazardous wastes for extended periods of time.

(b) Extent of Deviation: The "Extent of Deviation" was determined to be "Moderate" because aside from these twenty-six (26) containers, the Respondent appeared to be complying with provisions of the Subpart CC regulations at its facility.

The midpoint of the range was selected because the containers did not store the hazardous waste for extended periods of time.

(c) Multiple/Multi-day: The Respondent used a total of 26 containers that were subject to this requirement. Each failure by Respondent to make a determination for each container that it had no detectable emissions constitutes a separate violation.

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

Good faith: EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

Willfulness/Negligence: Not applicable

History of Compliance: Not applicable

Ability to Pay: Not applicable

Environmental Project: Not applicable

Other Unique Factors: Not applicable

3. Economic Benefit: The economic benefit derived from this violation was determined to be less than \$2,500.

4. Recalculation of Penalty Based on New Information: N/A

ATTACHMENT IIGRAVITY BASED PENALTY 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	\$27,500 to 22,000	\$21,999 to 16,500	\$16,499 to 12,100
	MODERATE	\$12,099 to 8,800	\$8,799 to 5,500	\$5,499 to 3,300
	MINOR	\$3,299 to 1,650	\$1,649 to 550	\$549 to 110



ATTACHMENT IIIMULTIPLE/MULTI-DAY PENALTY 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	\$5,500 to 1,100	\$5,499 to 825	\$3,300 to 605
	MODERATE	\$2,420 to 440	\$1,760 to 275	\$1,100 to 165
	MINOR	\$3,299 to 1,650	\$330 to 110	\$110