UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.**
	)	
Intercon Solutions, Incorporated	)	**Proceeding to Assess a Civil Penalty**
EPA ID No.: ILR000165464	)	**Under Section 3008(a) of the Resource**
Chicago Heights, Illinois,	)	**Conservation and Recovery Act,**
	)	**42 U.S.C. § 6928(a)**
Respondent.	)	
	)	

Complaint and Compliance Order

Preliminary Statement

1. This is an administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a).

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of [Name] pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b) and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

5. Respondent is Intercon Solutions, Incorporated; a corporation doing business in the State of Illinois.

Statutory and Regulatory Background

6. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279,

governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004, of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

8. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986). Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

9. The Administrator of U.S. EPA may assess a civil penalty of up to $25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to $32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through

January 12, 2009 [and may assess a civil penalty of up to $37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009].

General Allegations

11. Respondent was and is a "person" as defined by 35 IAC § 720.110, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

12. Respondent is an "owner" or "operator," as those terms are defined under [insert state reg.] and 40 C.F.R. § 260.10, of a facility located at [insert address] (Facility).

13. At all times relevant to this Complaint, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing or hazardous waste.

14. Respondent's Facility is a "facility," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

15. Respondent received and stored hazardous waste, also known as universal waste, under an alternative set of management standards in lieu of regulation pursuant to 35 IAC 702 through 750 and 720 through 728, and 40 C.F.R. parts 260 through 720.

16. At the time of the inspection, Respondent was storing barium contaminated waste, a hazardous waste with the U.S. EPA hazardous waste number D005, that was not generated by Respondent.

17. Respondent had stored lead contaminated waste, a hazardous waste with the U.S. EPA hazardous waste number D008, onsite that was not generated by Respondent.

18. Respondent had stored mercury containing waste, a hazardous waste with the U.S. EPA code D009, onsite that was not generated by Respondent.

19. Respondent notified as a universal waste handler on or about March 15, 2011.

20. At all times relative to this complaint, Respondent was a, "Large Quantity Handler of Universal Waste," as that term is defined under 35 IAC 733.109 and 40 C.F.R. 273.9.

21. At all times relative to the complaint, Respondent stored "Universal Waste - Batteries," as that term is defined under 35 IAC 733.109 and 40 C.F.R. 273.9, at its facility.

22. At all times relative to the complaint, Respondent stored "Universal Waste - Lamps," as that term is defined under 35 IAC 733.109 and 40 C.F.R. 273.9, at its facility.

23. The Illinois Environmental Protection Agency (IEPA) conducted an inspection of Respondent's facility on February 14, 2013.

24. IEPA issued a Notice of Violation to Respondent on or about May 7, 2013.

25. Respondent provided a response to IEPA's NOV described in paragraph 22 on or about June 27, 2013.

26. IEPA referred Respondent to U.S. EPA on or about August 20, 2014.

Count 1: Storage of Hazardous Waste without a Permit or Interim Status

27. Complainant incorporates paragraphs 1 through 24 of this Complaint as though set forth in this paragraph.

28. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

29. At the time of the inspection, Respondent was storing barium contaminated waste, a hazardous waste with the U.S. EPA hazardous waste number D005, without obtaining or applying for a permit.

30. Respondent had stored lead contaminated waste, a hazardous waste with the U.S. EPA hazardous waste number D008, without obtaining or applying for a permit.

31. The Safety Kleen facility in Denton, Texas, shipped approximately 209,348 pounds of used lithium drill rod batteries, which meet the definition of universal waste – batteries, to Respondent between March 14, 2008 and November 15, 2011.

32. Respondent shipped approximately 6,174 pounds of the universal waste - batteries referred to in paragraph 31 offsite.

33. Respondent, in its response to IEPA's NOV on or about June 27, 2013 in reference to the lead contaminated waste referred to in paragraph 28, stated that, "Some of the lead waste containers had hazardous waste labels and some did not."

34. Respondent had stored mercury containing waste, a hazardous waste with the U.S. EPA code D009, without obtaining or applying for a permit.

35. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 35 IAC §§ 703.121, 703.180, and 705.121.

Count 2: Storage of Universal Waste for over One Year

36. Complainant incorporates paragraphs 1 through 35 of this Complaint as though set forth in this paragraph.

Accumulation Time Limit Records

37. In accordance with 35 IAC § 733.133(c) and 40 CFR § 273.35(c), a large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it became a waste or is received.

38. At the time of the inspection, Respondent was unable to demonstrate the length of time that all its universal waste was accumulated from the date it became a waste or was received at its facility for all universal wastes at the facility.

Storage over One Year:

39. In accordance with 35 IAC § 733.133(a) and 40 CFR § 273.35(a), a large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, provided that the requirements of paragraph (b) of this section are met (See paragraph 38).

40. In accordance with 35 IAC § 733.133(b) and 40 CFR § 273.35(b), a large quantity handler of universal waste may accumulate hazardous waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

41. Approximately 203,174 pounds of the universal waste – batteries was onsite at the time of the inspection.

42. The universal waste – batteries referred to in paragraph 41 were at Respondent's facility for over one year.

43. Respondent, in its response to the IEPA NOV, did not prove that the storage of the universal waste – batteries referred to in paragraph 41 accumulated for longer than one year was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

44. Respondent, in its response to the IEPA NOV, stated that, "Intercon is now staging all batteries in one area according to dates", and "Management will be alerted as to the aging of materials that need to be disposed of within one year."

45. Respondent's failure to maintain records and accumulation of universal waste for more than one year without proving that the storage of the universal waste accumulated for longer than one year was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal was a violation of 35 IAC § 733.133(c) and 40 CFR § 273.35(c), and 35 IAC § 733.133(a) and 40 CFR 273.35(a).

Count 3: Failure to Meet Standards for the Management of Universal Waste

46. Complainant incorporates paragraphs 1 through 45 of this Complaint as though set forth in this paragraph.

Universal Waste – Batteries

47. In accordance with 35 IAC § 733.134(a) and 40 CFR § 273.24 (a), Respondent, as a Large Handler of Universal Waste, must label or mark each container in which the batteries are contained with the words, "Universal Waste – Battery(ies)," or "Waste Lamp(s)," or "Used Lamp(s)."

48. Respondent did not have all containers of universal waste – batteries marked or labeled with the words, "Universal Waste – Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)" at the time of the inspection.

Universal Waste – Lamps

49. In accordance with 35 IAC § 733.134(e) and 40 CFR § 273.34(e), Respondent, as a Large Quantity Handler of Universal Waste, must label or mark each container in which the

lamps were stored with the words, "Universal Waste – Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

50. Respondent did not have all containers of universal waste – lamps marked or labeled with the words, "Universal Waste – Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)" at the time of the inspection.

51. In accordance with 35 IAC § 733.133(d)(1) and 40 CFR § 273.33(d)(1), a large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

52. Respondent did not have all containers of universal waste – lamps in closed containers at the time of the inspection.

53. In accordance with 35 IAC § 733.133(d)(2) and 40 CFR § 273.33(d)(2), a large quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken.

54. Respondent had broken lamps on the ground at the facility at the time of the inspection that were not in a container.

55. Respondent's failure mark or label containers of universal waste, failure to clean up broken lamps, and failure to demonstrate the length of time universal wastes were accumulated, violated 40 CFR § 273.24 (a) and (e), 40 CFR § 273.33(d)(1) and (2).

Civil Penalty

56. Complainant proposes that the Administrator assess a civil penalty of $725,926

against Respondent for the violations alleged in this Complaint, as further explained in Attachment A, "Penalty Summary Sheet."

57. Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider the seriousness of the violation and any good faith efforts to comply with applicable requirements, pursuant to section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available upon request. This policy provides a consistent method of applying the statutory penalty factors to this case.

Compliance Order

58. Based on the foregoing, Respondent is hereby ordered, pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.37(b) to comply with the following requirements immediately upon the effective date of this Order:

59. Respondent shall not treat, store, or dispose of hazardous waste without a RCRA permit, except as provided for in paragraph 53 of this Order.

60. Respondent shall achieve and maintain compliance with all requirements and prohibitions governing the storage of universal waste applicable to handlers, codified at or incorporated by 35 IAC § 733 [40 C.F.R. Part 273] by the effective date of this Order.

61. Respondent shall notify U.S. EPA in writing within [15] days of the effective date of this Order either certifying compliance with the Order or explaining why it is not in compliance and proposing a date to achieve compliance.

62. Respondent shall submit all reports, submissions, and notifications required by this

Order the United States Environmental Protection Agency, Region 5, Land and Chemicals Division, RCRA Branch, Attention: Daniel Chachakis (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Rules Governing this Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the U.S. EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized [ORC attorney] to receive any Answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone [ORC attorney] at (312) [number]. [His][Her] address is:

[ORC attorney] (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd. 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

a. the circumstances or arguments which Respondent alleges constitute grounds of defense;

b. the facts that Respondent disputes;

c. the basis for opposing the proposed penalty; and

d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact [case developer] at (312) [number].

Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Payment of a civil penalty will not affect Respondent's continuing obligation to comply with RCRA and any other applicable federal, state or local law.

Date	Margaret M. Guerriero Director Land and Chemicals Division