



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 21 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Melissa O'Connor, Esq.
Attorney at Law
Kelly Kronenberg
8201 Peters Road, Suite 4000
Fort Lauderdale, Florida 33324

SUBJ: Blumberg Industries, Inc., d/b/a Fine Art Lamps
Consent Agreement and Final Order
Docket No. RCRA-04-2012-4010(b)

Dear Ms. O'Connor:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk in the above referenced matter. The CA/FO was effective upon filing.

As a reminder, Blumberg Industries, Inc. must make the first installment payment of the \$6,304.76 civil penalty, which is due within thirty (30) calendar days of the effective date of the CA/FO. A copy of the check, wire transfer or online payment should be submitted to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

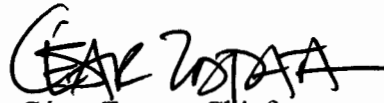
and to:

Larry L. Lamberth, Chief
South Section, RCRA & OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Also enclosed is a copy of a document titled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Blumberg Industries, Inc. on notice of its potential duties to disclose to the Securities and Exchange Commission any environmental actions taken by the EPA.

If you have any questions, please feel free to contact Gregory D. Luetscher, Associate Regional Counsel, at (404) 562-9677.

Sincerely,

A handwritten signature in black ink, appearing to read "César Zapata". The signature is stylized with a large initial "C" and a long horizontal stroke at the end.

César Zapata, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:) Docket Number: RCRA-04-2012-4010(b)
)
Blumberg Industries, Inc.) Proceeding under Section 3008(a) of the
d/b/a Fine Art Lamps) Resource Conservation and
5770 Miami Lakes Drive, East) Recovery Act, 42 U.S.C. § 6928(a)
Miami Lakes, Florida 33014)
)
EPA ID No.: FLR000043364)
)
Respondent)
_____)

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CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the Florida Statutes (F.S.), Part IV Resource Recovery and Management, §§ 403-701 *et seq.* (Subtitle C of RCRA, 42 U.S.C. §§ 6921 – 6939(e)). This action is also seeking civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of F.S. and regulations promulgated pursuant thereto, set forth at Florida Administrative Code Rules (F.A.C.) Chapters 62-730 *et seq.*, (Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, 273, and 279).
2. *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is Blumberg Industries, Inc. d/b/a Fine Art Lamps (Respondent), a corporation incorporated under the laws of the State of Florida and doing business in the State of Florida (Florida or the State). Respondent operates a business located at 5770 Miami Lakes Drive, East, Miami Lakes, Florida, 33014 (facility).

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Florida has received final authorization from EPA to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at F.S. § 403.702 et seq. and F.A.C. Chapter 62-730.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by EPA until a state is granted final authorization with respect to those requirements. The State of Florida has received authorization for certain portions of HSWA, including those cited.
8. Although EPA has granted the State authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to address violations of the requirements of the authorized state program. This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State.
9. As the State of Florida's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations alleged herein will be to the authorized Florida program, however for ease of reference the federal citations will follow in parentheses.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. Section 403.722, F.S. (Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)) requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found in subsection 62-730.160, F.A.C., (40 C.F.R. Part 262).

12. Section 403.722, F.S. (Section 3005(a) of RCRA, 42 U.S.C. § 6925(a)), sets forth the requirement that facilities that treat, store, or dispose of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found in subsections 62-730.180 and 62-730.220, F.A.C. (40 C.F.R. Parts 124, 264, 265 and 270).
13. Pursuant to subsection 62-730.020, F.A.C. (40 C.F.R. § 260.10), a “*generator*” is defined as “any person, by site, whose act or process produces hazardous waste identified or listed in [40 C.F.R. Part 261] or whose act first causes a hazardous waste to become subject to regulation.”
14. Pursuant to subsection 62-730.020, F.A.C. (40 C.F.R. § 260.10), a “*facility*” includes all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing or disposing of hazardous waste.
15. Pursuant to subsection 62-730.020, F.A.C. (40 C.F.R. § 260.10), a “*person*” includes, inter alia, a firm, a joint stock company, a corporation, a partnership and an association.
16. Pursuant to subsection 62-730.020, F.A.C. (40 C.F.R. § 260.10), an “*owner*” means the person who owns a facility or part of a facility and an “*operator*” means the person responsible for the overall operation of a facility.
17. Pursuant to subsection 62-730.030(1), F.A.C. (40 C.F.R. § 261.2), a “*solid waste*” is any discarded material that is not otherwise excluded from the regulations. A “*discarded material*” includes any material that is abandoned by being, inter alia, accumulated, stored, or treated before, or in lieu of, being disposed.
18. Pursuant to subsection 62-730.030(1), F.A.C. (40 C.F.R. § 261.3), a solid waste is a “*hazardous waste*” if it is not excluded from regulation as a hazardous waste under subsection 62-730.030(1), F.A.C. (40 C.F.R. § 261.4(b)), and it meets any of the criteria specified in subsection 62-730.030(1), F.A.C. (40 C.F.R. § 261.3(a)(2)).
19. Pursuant to subsection 62-730.030(1), F.A.C. (40 C.F.R. § 261.30), a solid waste is a hazardous waste if it is listed in 40 C.F.R. Part 261, Subpart D, which includes twenty eight “F-listed” wastes generated from nonspecific sources; F001 through F005 listed wastes are spent solvents from nonspecific processes. The following nonhalogenated solvents, when spent, are F003 listed hazardous wastes: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol. The following nonhalogenated solvents, when spent, are F005 listed hazardous wastes: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane.
20. Pursuant to subsection 62-730.030(1), F.A.C. (40 C.F.R. § 261.20), solid wastes that exhibit any of the characteristics identified in subsection 62-730.030(1), F.A.C. (40 C.F.R. §§ 261.21 through 261.24), are characteristic hazardous wastes, and are provided with the EPA Hazardous Waste Numbers D001 through D043. A D001 hazardous waste is a solid waste that exhibits the characteristic of ignitability. A solid waste that exhibits the

characteristic of toxicity for chromium is a D007 hazardous waste, and a solid waste that exhibits the characteristic of toxicity for methyl ethyl ketone is a D035 hazardous waste.

21. In its Biennial Hazardous Waste Report for 2009, Respondent reported that the facility generated 19 tons of hazardous waste per year.
22. Respondent provided notice to the Florida Department of Environmental Protection (FDEP) on March 15, 2010, that the facility is a Large Quantity Generator (LQG) of hazardous waste.
23. Consistent with subsection 62-730.160(1), F.A.C. (40 C.F.R. Part 262), Respondent has designated the facility as a LQG because the facility generates 1,000 kilograms or greater of hazardous waste per calendar month.
24. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.11), a person who generates a solid waste must determine if that waste is a hazardous waste.
25. Pursuant to subsection 62-730.160, F.A.C. (40 C.F.R. § 262.34(a)(1)(i)), a generator may accumulate hazardous waste in a container for ninety (90) days or less without a permit or without having interim status, provided that the generator complies with, inter alia, the applicable requirements of subsection 62-730.160, F.A.C. (40 C.F.R. Part 265, Subparts I, AA, BB and CC).
26. Pursuant to subsection 62-730.160, F.A.C. (40 C.F.R. § 262.34(a)(2)), a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.
27. Pursuant to subsection 62-730.160, F.A.C. (40 C.F.R. § 262.34(a)(3)), a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste."
28. Pursuant to subsection 62-730.160, F.A.C. (40 C.F.R. § 262.34(b)), a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of subsections 62-730.180(1) & (2), F.A.C. (40 C.F.R. Parts 264 and 265) and the permit requirements of subsection 62-730.220(1), F.A.C. (40 C.F.R. Part 270) unless he has been granted an extension..
29. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(a)(4)), a condition of the 40 C.F.R. § 262.34(a) permit exemption is predicated upon a generator's compliance with subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.31), which requires that a facility be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

30. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(c)(1)(i)), a generator may accumulate as much as 55-gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate (“satellite accumulation area” or “SAA”) without a permit or interim status, provided that the generator complies with, among other things, subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.173(a)), which requires that a container holding hazardous waste must always be closed during storage except when it is necessary to add or remove waste.
31. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(c)(1)(ii)), a generator may accumulate as much as 55-gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate without a permit or without having interim status, provided that the generator, among other things, marks his containers with the words “Hazardous Waste” or with other words that identify the contents of the containers.
32. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(a)(1)(i)), a generator of hazardous waste may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided the generator complies with subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.174), which requires a generator to inspect, at least weekly, areas where containers are stored. In addition, subsection 62-730.160(6), F.A.C., requires that written documentation of the inspections be kept at least three years from the date of the inspections.
33. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(a)(4)), a condition of the 40 C.F.R. § 262.34(a) permit exemption is a generator’s compliance with subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.52(c)) whereby a facility’s Contingency Plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services.
34. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(a)(4)), a condition of the 40 C.F.R. § 262.34(a) permit exemption is a generator’s compliance with subsection 62-730.180(2), F.A.C., (40 C.F.R. § 265.52(d)) whereby the facility’s Contingency Plan must list the names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and must be kept up to date.
35. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(a)(4)), a condition of the 40 C.F.R. § 262.34(a) permit exemption is a generator’s compliance with subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.54(d)), whereby the facility is required to review its Contingency Plan and immediately amend it whenever the list of emergency coordinators changes.
36. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(a)(4)) a condition of the 40 C.F.R. § 262.34(a) permit exemption is a generator’s compliance with subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.16) whereby facility personnel must successfully complete a program of class room instruction or on-the-job training that teaches them to

perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 265. Under subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.16(a)(3)), the training program must, at a minimum, be designed to ensure that facility personnel are able to respond effectively to emergencies.

37. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(a)(4)), a condition of the 40 C.F.R. § 262.34(a) permit exemption is a generator's compliance with subsection 62-730.180(2) (40 C.F.R. § 265.37) whereby the owner or operator of a facility is required to attempt to make arrangements to familiarize police, fire department and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes.
38. Pursuant to subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.41(b)), a generator must keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.
39. Pursuant to subsection 62-730.185(1), F.A.C. (40 C.F.R. § 273.9), "*Universal Waste*" includes batteries as described in 40 C.F.R. § 273.2 and which are hazardous wastes.
40. Pursuant to subsection 62-730.185(1), F.A.C. (40 C.F.R. § 273.9), a "*Universal Waste Handler*" means a generator of universal waste as defined in 40 C.F.R. § 273.9; a "*Small Quantity Handler of Universal Waste*" is a universal waste handler who does not accumulate 5,000 kilograms or more of universal waste at the facility at any time.
41. Pursuant to subsection 62-730.185(1), F.A.C. (40 C.F.R. § 273.14(a)), a small quantity handler of universal waste must label or mark clearly each waste battery, or a container in which such batteries are contained, with one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."
42. Pursuant to subsection 62-730.185(1), F.A.C. (40 C.F.R. § 273.15(c)), a small quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated at the facility from the date it becomes a waste or was received.

IV. EPA ALLEGATIONS AND DETERMINATIONS

43. Respondent is a "*person*" as defined in subsection 62-730.020, F.A.C. (40 C.F.R. § 260.10).
44. Respondent is the "*owner*" and "*operator*" of a "*facility*" located at 5770 Miami Lakes Drive, East, in Miami Lakes, Florida, as those terms are defined in subsection 62-730.020, F.A.C. (40 C.F.R. § 260.10).

45. Respondent is a manufacturer of high-end decorative lamps and lighting accessories for interior and exterior applications. Activities conducted at the facility consist of designing, assembling, finishing, painting, packaging and shipping of lamps.
46. Respondent generates wastes at the facility that are “*solid wastes*” and “*hazardous wastes*” as defined in section 62-730.030, F.A.C. (40 C.F.R. §§ 261.2 and 261.3).
47. Respondent, as a result of facility operations, generates greater than 1,000 kilograms of hazardous waste at the facility in a calendar month.
48. Respondent is a generator and small quantity handler of Universal Waste lamps.
49. Respondent, as a result of its painting and other associated operations at its facility, is a generator of D001, D007, D035, F003, and F005 hazardous wastes.
50. On March 8, 2010, a representative of EPA and a representative of FDEP performed a RCRA compliance evaluation inspection (CEI) of Respondent’s facility. The findings of the CEI were documented in a RCRA inspection report, dated June 9, 2010.
51. At the time of the CEI, Respondent had not made a hazardous waste determination on certain solid wastes, including but not limited to solvent-laden rags observed being stored in the painting area of its facility in containers along with non-hazardous waste.
52. EPA therefore alleges that Respondent violated subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.11) by failing to make a hazardous waste determination on solid waste generated at its facility.
53. During the CEI, the EPA and FDEP inspectors observed containers of hazardous waste in multiple satellite accumulation areas throughout the facility that were open although hazardous waste was not at the time being added or removed, including the following: two (2) containers in the Metal Preparation Area; one (1) container in the Visual Merchandizing Display Area; five (5) containers in the Paint Booth/Base Coat Area; and two (2) containers in the Finishing Area.
54. EPA therefore alleges that Respondent violated Section 403.722, F.S. (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, because Respondent failed to meet a subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(c)(1)(i)) requirement for a permit exemption by failing to comply with subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.173(a)) by failing to keep its containers closed except when necessary to add or remove waste.
55. During the CEI, the EPA and FDEP inspectors observed containers of hazardous waste in multiple satellite accumulation areas throughout the facility without the words “Hazardous Waste” or other words that identify the contents of the containers, including the following: two (2) containers in the Metal Preparation Area; one (1) container in the Visual

Merchandizing Display Area; five (5) containers in the Paint Booth/Base Coat Area; and two (2) containers in the Finishing Area.

56. EPA therefore alleges that Respondent violated Section 403.722, F.S. (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, because Respondent failed to meet a subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(c)(1)(ii)) requirement for a permit exemption by failing to label containers of hazardous waste located in satellite accumulation areas.
57. During the CEI, the EPA and FDEP inspectors observed eight 55-gallon drums containing waste zinc chromate filters, a D007 hazardous waste that exhibits the characteristic of toxicity for chromium, located in the 90-day storage area without either a start accumulation date or a label marked with the words “Hazardous Waste.”
58. EPA therefore alleges that Respondent violated Section 403.722, F.S. (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, because Respondent failed to meet subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(a)(2) and (a)(3)) requirements for a permit exemption by failing to label its containers with an accumulation start date or the words “hazardous waste.”
59. During the CEI, the EPA and FDEP inspectors observed that Respondent had failed to close two 55-gallon drums of waste zinc chromate filters, a D007 hazardous waste that exhibits the characteristic of toxicity for chromium, located in the 90-day hazardous waste storage/compactor area.
60. EPA therefore alleges that Respondent violated Section 403.722, F.S. (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, because Respondent failed to meet a subsection 62-730.160(1), F.A.C. (40 C.F.R. § 262.34(a)(1)(i)) requirement for a permit exemption by failing to comply with subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.173(a)) by not keeping its containers closed.
61. During the CEI, the EPA inspector observed that the facility’s Contingency Plan neither described arrangements agreed to by local police departments, fire departments, hospitals, contractors and state and local emergency response teams to coordinate emergency services, nor did it have addresses for the emergency coordinators.
62. EPA therefore alleges that Respondent violated Section 403.722, F.S. (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, because Respondent failed to meet a subsection 62-730.160(2), F.A.C. (40 C.F.R. § 262.34(a)(4)) requirement for a permit exemption by failing to comply with subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.52(c) and (d)) by not describing the requisite arrangements and failing to include addresses for the emergency coordinators in its Contingency Plan.

63. During the CEI, the EPA inspector learned that Respondent had not updated the contingency plan since the end of 2008 when the prior emergency coordinator had ceased working at the facility.
64. EPA therefore alleges that Respondent violated Section 403.722, F.S. (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, because Respondent failed to meet a subsection 62-730.160(2), F.A.C. (40 C.F.R. § 262.34(a)(4)) requirement for a permit exemption by failing to comply with subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.54(d)) by not updating its contingency plan.
65. During the CEI, following a request by the EPA inspector, Respondent was unable to provide any records reflecting it made, or attempted to make, arrangements to familiarize police, fire department and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes.
66. EPA therefore alleges that Respondent violated Section 403.722, F.S. (Section 3005 of RCRA, 42 U.S.C. § 6925) for storing hazardous waste without a permit or interim status, because Respondent failed to meet a subsection 62-730.160(2), F.A.C. (40 C.F.R. § 262.34(a)(4)) requirement for a permit exemption by failing to comply with subsection 62-730.180(2), F.A.C. (40 C.F.R. § 265.37) by not making or attempting to make the requisite arrangements to familiarize local response authorities.
67. During the CEI, the EPA inspector observed universal waste batteries in the 90-day storage area which were not labeled or clearly marked with the words “Universal Waste-Battery(ies),” or “Waste Battery(ies)” or “Used Battery(ies).”
68. EPA therefore alleges that Respondent violated subsection 62-730.185(1), F.A.C. (40 C.F.R. § 273.14(a)) by failing to label its Universal Waste batteries.
69. At the time of the CEI, Respondent was not able to demonstrate the length of time that the universal waste batteries in the 90-day storage area had been accumulated from the date that they became a waste or were received.
70. EPA therefore alleges that Respondent violated subsection 62-730.185(1), F.A.C. (40 C.F.R. § 273.15(c)) by failing to mark the length of time the universal waste batteries had been accumulating.

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations, and Determinations, the parties agree to the following:

71. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
72. Respondent neither admits nor denies the factual allegations and determinations contained in this CA/FO.
73. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
74. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
75. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.
76. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
77. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized Florida hazardous waste program.
78. The parties agree that compliance with the terms of this CA/FO shall resolve all of Respondent's liability for civil penalties for the violations alleged and facts stipulated to in this CA/FO.
79. Each party will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

80. Respondent consents to the payment of a civil penalty in the amount of **FIFTY THOUSAND DOLLARS (\$50,000.00)**, payable as follows:
 - a. The civil penalty in the amount of **FIFTY THOUSAND DOLLARS (\$50,000.00)** may be paid in up to eight (8) payments for complete payment of the entire penalty, including interest. Respondent's first payment shall be due and paid within thirty (30) days of the effective date of this CA/FO, which is upon its filing with the Regional Hearing Clerk. Respondent's subsequent payments shall thereafter be due in three (3) calendar month intervals from said effective date. Including the civil penalty and interest at the rate of one percent (1%) per annum, the total amount that will be paid upon the completion of all payments will be **\$50,438.05**.

Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Amount Due</u>
1	within 30 <i>days</i> of the date CA/FO was filed	\$ 6,304.76
2	within 3 <i>months</i> of the date CA/FO was filed	\$ 6,304.76
3	within 6 months of the date CA/FO was filed	\$ 6,304.76
4	within 9 months of the date CA/FO was filed	\$ 6,304.76
5	within 12 months of the date CA/FO was filed	\$ 6,304.76
6	within 15 months of the date CA/FO was filed	\$ 6,304.76
7	within 18 months of the date CA/FO was filed	\$ 6,304.76
8	within 24 months of the date CA/FO was filed	\$ 6,304.73

- b. Respondent agrees that, upon any failure to make a payment in accordance with the schedule set forth above, the entire unpaid balance of the penalty and accrued interest shall be then due and payable. In such an event, Respondent's liability shall include the immediate payment of the entire remaining principal balance of the civil penalty along with any penalties and interest accrued up to the date payment is made. In the event of any such failure or default, Respondent agrees to pay and shall remain liable for administrative handling charges and late payment penalty charges as described below.
- c. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may avoid liability for payment of interest and penalties by electing to pay the entire civil penalty of **FIFTY THOUSAND DOLLARS (\$50,000)** before the date the first installment payment is due. In addition, at any time after making the initial payment Respondent may elect to pay the entire principal balance remaining together with any penalties and interest accrued up to the date such payment is made.
81. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
Environmental Protection Agency
808 17th Street, N.W.
Washington, D.C. 20074
Contact: Jesse White
(301) 887-6548

Respondent shall submit a copy of each payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
And to:

Larry Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

82. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within thirty (30) calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- (a) Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
 - (b) Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar-day period over which an unpaid balance remains.
 - (c) Non-Payment Penalty. On any portion of a civil penalty more than 90 calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
83. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

84. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
85. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
86. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

87. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste

or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment.

88. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
89. Except as expressly provided in this CA/FO, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, treatment, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.
90. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

IX. OTHER APPLICABLE LAWS

91. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations.

X. SERVICE OF DOCUMENTS

92. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Gregory D. Luetscher
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

93. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Mr. Max Blumberg
Chief Executive Officer
Blumberg Industries, Inc. d/b/a Fine Art Lamps
5770 Miami Lakes Drive, East
Miami Lakes, Florida 33014

XI. SEVERABILITY

94. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO, or the application of this CA/FO to any party or circumstances, is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

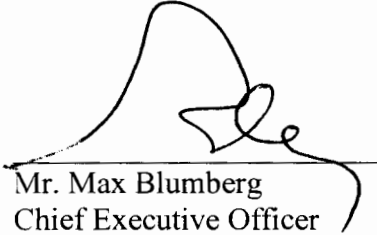
95. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

[Remainder of this page intentionally left blank]

In the matter of Blumberg Industries, Inc. d/b/a Fine Art Lamps, Docket No. RCRA -04-2012-4010(b):


AGREED AND CONSENTED TO:

Blumberg Industries, Inc. d/b/a Fine Art Lamps

By: 
Mr. Max Blumberg
Chief Executive Officer
Blumberg Industries, Inc. d/b/a Fine Art Lamps

Dated: 9-7-12

United States Environmental Protection Agency

By: 
César Zapata, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Dated: 9/19/12



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:) Docket Number: RCRA-04-2012-4010(b)
)
Blumberg Industries, Inc.) Proceeding under Section 3008(a) of the
d/b/a Fine Art Lamps) Resource Conservation and
5770 Miami Lakes Drive, East) Recovery Act, 42 U.S.C. § 6928(a)
Miami Lakes, Florida 33014)
)
EPA ID No.: FLR000043364)
)
Respondent)
_____)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 19th day of September, 2012.

BY: 
Gwendolyn Keyes Fleming
 Regional Administrator
United States Environmental Protection Agency, Region 4