



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX
75 Hawthorne Street
San Francisco, CA 94105
Phone: (415) 972-3000
<http://www.epa.gov/region9>

CERTIFIED MAIL NO. 7011 0110 0001 9066 8012
RETURN RECEIPT REQUESTED

Ladd Kleimann, President
Fluoresco Lighting and Signs
5505 S. Nogales Hwy.
Tucson, AZ 85126

Re: In the matter of Fluoresco Lighting and Signs U.S. EPA Docket Nos. RCRA-09-2011-0012 and TSC 2011-0014

Dear Mr. Kleimann:

Enclosed is a copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with the United States Environmental Protection Agency (EPA).

When the EPA receives the final payment of the penalty identified in the Consent Agreement and Final Order this case will be closed. If you have any questions regarding the rules, regulations and statutes which govern the proceedings terminated by the enclosed Consent Agreement and Final Order, please contact Karen Goldberg at (415) 972-3951.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott", with a stylized flourish at the end.

Jeff Scott, Director
Waste Management Division

Enclosure

RECEIVED BY OALJ
2012 JUL -5 PM 12:42

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of) U.S. EPA Docket No.
) RCRA 09-2011-0012
) TSCA 09-2011-0014
Fluoresco Lighting and Signs)
) CONSENT AGREEMENT
) AND FINAL ORDER
EPA ID No. AZR000045757,)
)
Respondent.)

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CONSENT AGREEMENT

Complainant, the Director of the Waste Management Division, United States Environmental Protection Agency, Region IX ("EPA"), and Respondent, Fluoresco Lighting and Signs, seek to settle this matter initiated against Respondent under the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 *et seq.* and the Toxic Substances Control Act, ("TSCA"), 15 U.S.C. §§ 2601 *et seq.*, and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY

1. This civil administrative enforcement action was instituted pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. §6928(a)(1), Section 16(a) of TSCA, 15 U.S.C. §2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, at 40 CFR Part 22. EPA instituted this action by service of a Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing ("Complaint") to Respondent. The Complaint alleges that Respondent violated Sections 3001 *et seq.* of RCRA, 42 U.S.C. §§ 6921 *et seq.*, implementing regulations at 40 CFR Parts 262, 265, and 270, and state regulations adopted pursuant to the federally authorized Arizona hazardous waste management program, as set forth in detail in Section I.C. of the Complaint, and Section 15 of TSCA, 15 U.S.C. § 2614, and implementing regulations governing polychlorinated biphenyls ("PCBs") at 40 CFR Part 761, at the facility operated by Respondent at 5505 S. Nogales Hwy. in Tucson, Arizona 85706 ("the Facility").

B. ADMISSIONS AND WAIVER OF RIGHTS

2. For the purposes of this proceeding, Respondent admits that EPA has jurisdiction over the subject matters set forth in the Complaint and over Respondent. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CAFO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction

and authority to compel compliance with this CAFO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CAFO as provided herein.

3. For purposes of this proceeding, Respondent neither admits nor denies any allegations of fact set forth in the Complaint. Respondent hereby waives any right Respondent may have to a hearing to contest any issue relating to the factual allegations or legal conclusions set forth in the Complaint, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), or Section 16(a)(2)(A) of TSCA, 16 U.S.C. § 2615(a)(2)(A). Respondent hereby consents to the issuance of this CAFO without adjudication and waives the right to appeal the final order contained in this CAFO.

C. PARTIES BOUND

4. This CAFO shall apply to and be binding upon Respondent and its agents, successors and assigns, and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section D has been paid and any stipulated penalties have been resolved. At such time as those matters are concluded, this CAFO shall terminate and constitute full settlement and satisfaction of all claims and violations alleged in the Complaint.
5. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CAFO.
6. Until termination of this CAFO, Respondent shall give notice of this CAFO to any successor in interest prior to transfer of ownership or operation of Facility and shall notify EPA no later than one month after such transfer.
7. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CAFO and to execute and legally bind Respondent to this CAFO.

D. PAYMENT OF CIVIL PENALTY

8. Respondent consents to the assessment of and agrees to pay a civil penalty of SIX THOUSAND DOLLARS (\$6,000.00) in full settlement of the civil penalty claims alleged in the Complaint.
9. The aforesaid settlement amount was based upon EPA's consideration of the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), and TSCA Sections 14 and 15(a), 15 U.S.C. §§

2614, 2615(a) and in accordance with the applicable provisions of the “June 2003 RCRA Civil Penalty Policy”, the “April 9, 1990 TSCA Civil Penalty Policy,” and “Guidance on Determining a Violator’s Ability to Pay a Civil Penalty” (December 16, 1986). Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and Section 16(a) of TSCA, 15 U.S.C. § 2615(a), as adjusted by the Debt Collection Improvement Act of 1996, *see* 61 Fed. Reg. 69360 (Dec. 31, 1996), 69 Fed. Reg. 7121 (Feb. 13, 2004) and 73 Fed. Reg. 75340 (Dec. 11, 2008), authorize a civil penalty of up to THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009.

10. Respondent shall submit payment of the SIX THOUSAND DOLLARS (\$6,000.00) civil penalty within thirty (30) days of the effective date of this CAFO. Payment shall be made by remitting a certified or cashier’s check, including the name and docket number of this case, for the full amount, payable to “Treasurer, United States of America,” (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter “sfo1.1” in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

11. A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent’s name, the case title, and docket numbers, to both the following Region IX addresses:

Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Estrella Armijo (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

12. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) days of the effective date of this CAFO to avoid additional charges. If payment is not received, interest will accrue on the principal amount due from the deadline at the current rate published by the United States Treasury as described at 40 CFR §13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each

subsequent thirty (30) day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the deadline. Respondent will also be liable for stipulated penalties as set forth below for any payment not received by its deadline.

E. STIPULATED PENALTIES

13. In the event Respondent fails to submit payment to EPA by the time required in this CAFO, Respondent shall pay stipulated penalties up to FIVE HUNDRED DOLLARS (\$500.00) per day for the first to fifteenth day of delay, up to ONE THOUSAND DOLLARS (\$1,000.00) per day for the sixteenth to thirtieth day of delay, and up to FIFTEEN HUNDRED DOLLARS (\$1,500.00) per day for each day of delay thereafter.
14. All stipulated penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
15. All stipulated penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a written demand by EPA for such penalties. Such demand shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Unless EPA directs payments pursuant to this CAFO to a different address, any stipulated penalty payment shall be made in accordance with one of the options set forth above under paragraph 10.
16. At the time a stipulated penalty payment in accordance with the foregoing paragraph is made, a copy of the check or other form of payment or evidence thereof shall be sent to each of the following Region IX addresses:

Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Estrella Armijo (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

17. All stipulated penalty payments shall indicate the name of the Facility, EPA identification number of the Facility, Respondent's name and address, and the EPA docket number of this action.
18. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
19. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CAFO.

F. RESERVATION OF RIGHTS

20. EPA expressly reserves all rights and defenses that it may have.
21. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CAFO, except as to those civil penalties for the violations and facts alleged herein and in the Complaint. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CAFO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. §6928(c). This CAFO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA and TSCA (except as to those civil penalties for the violations and facts alleged herein), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.
22. The entry of this CAFO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of the Complaint.
23. Compliance by Respondent with the terms of this CAFO shall not relieve Respondent of its obligations to comply with applicable local or Arizona laws and regulations.
24. This CAFO is not intended to be nor shall it be construed as a permit. This CAFO does not relieve Respondent of any obligation to obtain and comply with any local, Arizona, or federal permits.

G. OTHER CLAIMS

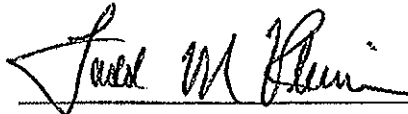
25. Nothing in this CAFO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

H. MISCELLANEOUS

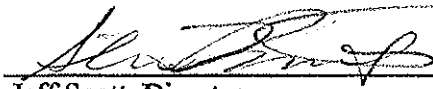
26. By signing this CAFO, Respondent without admitting or denying them, certifies that all of the alleged violations set forth in Section C of the Complaint, which are or were capable of correction, have been corrected.
27. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.
28. The Effective Date of this CAFO is the date the CAFO, once signed by the Regional Judicial Officer, is filed with the Headquarters Hearing Clerk.

IT IS SO AGREED.

4/3/12
Date


Fluoresco Lighting and Signs

6/29/12
Date

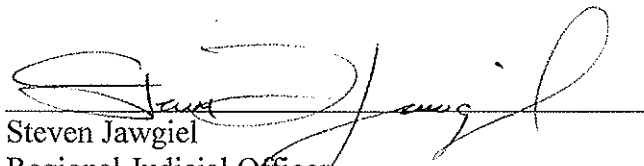

Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency, Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No.s RCRA 09-2011-0012 and TSCA 09-2011-0014) be entered and that FLUORESCO LIGHTING AND SIGNS, ("Respondent") pay a civil penalty of SIX THOUSAND DOLLARS (\$6,000.00) by check payable to "Treasurer of the United States," or by any another method specified in paragraph 10 of this Consent Agreement and Final Order, within thirty (30) days of receiving the final Consent Agreement and Final Order. A notice of the payment and a copy of the check or other form of payment or evidence thereof shall be sent to the EPA Region IX addresses specified in Paragraph 11 of this Consent Agreement and Final Order.

This Final Order, once signed, shall be effective immediately upon it being filed with the Regional Hearing Clerk.

06/29/12
Date


Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

In The Matter of Fluoresco Lighting and Signs., RCRA-09-2011-0012 and TSCA 09-2011-0014

CERTIFICATE OF SERVICE

I certify that the foregoing **Consent Agreement and Final Order**, dated July 5, 2012 following manner to the addresses listed below.



Sybil Anderson
Headquarters Hearing Clerk

Dated: **July 5, 2012**

Copy By Regular Mail And Email to:

Karen Goldberg, Esq.
Office of Regional Counsel
U.S. EPA, Region IX, ORC-2
75 Hawthorne Street
San Francisco, CA 94105
Email: Goldberg.Karen@epa.gov

Patrick Paul, Esq.
Christopher P. Colyer, Esq.
Snell & Wilmer, LLP
400 E. Van Buren
Phoenix, AZ 85004
Email: Ppaul@swlaw.com
Ccolyer@swlaw.com

Courtesy Copy by Regular Mail and Email to:

Bryan Goodwin
Regional Hearing Clerk
U.S. EPA, Region 9
75 Hawthorne Street
Mail Code WST-1
San Francisco, CA 94105
Email: Goodwin.Bryank@epa.gov