



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL 13 2011

CERTIFIED MAIL/RETURN RECEIPT

Matthew E. Moloshok, Esq.
Hellring, Lindeman, Goldstein & Siegal LLP
One Gateway Center
Newark, New Jersey 07102-6399

Re: Fiabila USA Incorporated
Docket No. RCRA-02-2010-7108

Dear Mr. Moloshok:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Administrator of the U.S. Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in that Order. In addition, the Supplemental Environmental Project is to be performed as described in the Consent Agreement.

If you have any questions, please contact me at 212-637-3195.

Sincerely yours,

Gary H. Nurkin
Assistant Regional Counsel

cc: Michael Hastry, NJDEP

U.S. ENVIRONMENTAL PROTECTION AGENCY
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RECEIVED
CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

In The Matter of:

Fiabila USA Incorporated,

Respondent

Proceeding under Section 3008 of the Solid
Waste Disposal Act, as amended

CONSENT AGREEMENT
AND
FINAL ORDER

Docket Number: RCRA-02-2010-7108

U.S. ENVIRONMENTAL PROTECTION AGENCY
2011 JUL 13 P 7 21
DIVISION OF ENFORCEMENT AND COMPLIANCE ASSISTANCE

PRELIMINARY STATEMENT

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, 42 U.S.C. §§ 6901, *et seq.* (referred to collectively as “RCRA” or the “Act”).

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. Complainant in these proceedings, the Director of the Division of Enforcement and Compliance Assistance (“DECA”), EPA Region 2, issued a “Complaint and Notice of Opportunity for Hearing” on June 30, 2010 to Respondent Fiabila USA Incorporated (“Fiabila”), which owns and operates a facility at 114 Iron Mountain Road, Mine Hill, New Jersey 07803. The Complaint alleges that Respondent, Fiabila violated requirements of RCRA and regulations concerning the management of organic hazardous waste at its Mine Hill facility. The time for Fiabila to respond to the Complaint has not expired.

EPA and Fiabila have subsequently engaged in settlement discussions with respect to the violations alleged in the aforementioned Complaint. Both the Complainant, the Director of EPA Region 2's Division of Enforcement and Compliance Assistance, and the Respondent, Fiabila, have agreed that entering into this Consent Agreement/Final Order (“CA/FO”) is an appropriate means of resolving the alleged noncompliance with RCRA requirements that EPA believes existed at the Mine Hill facility without further litigation or other administrative action.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies EPA's Findings of Fact or Conclusions of Law set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is Fiabila.
2. Respondent is a corporation.
3. Respondent is a “person” as that term is defined in § 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)).
4. At all times relevant hereto, Respondent has owned and operated a facility located at 114 Iron Mountain Road, Mine Hill, New Jersey 07803 (hereinafter, “Mine Hill facility”).
5. Respondent stores spent solvent, generated from its manufacturing of nail polish in a two thousand gallon hazardous waste tank.
6. Respondent has been and remains the “owner” and has been and remains the “operator” of the Mine Hill facility as those terms are defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)).
7. The hazardous wastes generated at the Mine Hill facility in the manufacturing of nail polish have included, without limitation, characteristic wastes (“D wastes”) and wastes from nonspecific sources (“F wastes”).
8. Organic hazardous waste (primarily spent solvent) generated during the manufacture of nail polish is stored in a 2,000 gallon hazardous waste storage tank before being transported off-site for disposal.
9. The organic hazardous waste stored in the 2,000 gallon hazardous waste storage tank has a volatile organic concentration of more than 500 parts per million (“ppm”).
10. Respondent has been a “generator” of “hazardous waste”, as those terms are defined in 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)), at its Mine Hill facility.
11. Since on or about May 2006, Respondent has generated and continues to generate at least 1,000 kilograms (“kg”) of hazardous waste in a calendar month at its Mine Hill facility.
12. On or about May 21, 2009, a duly designated representative of EPA, pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, conducted a Compliance Evaluation Inspection (“May Inspection”) of Respondent’s facility.

13. On or about August 26, 2009, EPA issued to Respondent a combined Notice of Violation ("NOV") and Request for Information ("IRL").
14. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed the Respondent that EPA had identified a number of potential violations of both the air emission requirements for equipment leaks found at 40 C.F.R. Part 265 Subpart BB(1993)(N.J.A.C. 7:26G-9.1(a)) and the air emission standards for tanks, surface impoundments and containers found at 40 C.F.R. Part 265 Subpart CC(1998)(N.J.A.C. 7:26G-9.1(a)) and requested Respondent to provide a description and documentation of the actions Fiabila had taken to correct the violations identified by EPA in that NOV.
15. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part, information and documentation relating to the air emission activities regulated under 40 C.F.R. Part 265 Subpart BB (1993)(N.J.A.C. 7:26G-9.1(a)) and 40 C.F.R. Part 265 Subpart CC (1998)(N.J.A.C. 7:26G-9.1(a)) and required submittal of certain documentation relating to those air emission activities at the facility including, but not limited to: (1) monthly amounts and types of hazardous waste generated from May 2006 through May 2009; (2) equipment subject to the air emission requirements; (3) monitoring of valves and pumps; (4) listing of equipment that was in contact with organic hazardous waste for less than 300 hours per calendar year; (5) maximum organic vapor pressure calculations for the aboveground hazardous waste storage tank situated at the facility; and (6) other documentation relating to air emissions that would assist the EPA in evaluating Fiabila's compliance with RCRA at its Mine Hill facility.
16. On or about October 30, 2009, the Respondent submitted its response to the combined NOV and IRL ("October Response").
17. On or about November 16, 2009, Respondent submitted additional information in response to the combined NOV and IRL ("Addendum").
18. Based upon the Inspection and Respondent's responses to the joint NOV/IRL, EPA issued a Complaint to Fiabila on June 30, 2010, alleging that Fiabila failed to: (1) conduct required monitoring of the pump used to transport organic waste, (2) inspect the pump carrying organic waste, (3) conduct required monitoring of valves in light liquid service, (4) conduct initial and annual inspections of the 2,000 gallon hazardous waste storage tank, (5) determine maximum organic vapor pressure of the 2,000 gallon hazardous waste storage tank, (6) secure the closure device on the 2,000 gallon hazardous waste storage tank and (7) minimize releases from the 2,000 gallon hazardous waste storage tank.

19. Respondent has subsequently informed EPA that it has been in compliance with the 300 hour exemption since November 2009 when it listed in the operating log for the facility all pieces of equipment that contained or contacted hazardous waste with an organic concentration of at least 10% for less than 300 hours per calendar year. As a result the facility is no longer required to comply with the requirements of 40 C.F.R. 265 Subpart BB with respect to these pieces of equipment.
20. Respondent has also informed EPA that in the future it intends to be a "generator" of hazardous waste and will not store hazardous waste at the facility except for short term accumulation of hazardous waste in accordance with rules for such accumulation by generators.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant and Respondent and voluntarily and knowingly accepted by Fiabila, that Fiabila for purposes of this Consent Agreement: (a) admits that EPA has jurisdiction over this matter as recited in the Preliminary Statement of the CA/FO; (b) neither admits nor denies the Findings of Fact or Conclusions of Law stated above; (c) consents to the assessment of the civil penalty as set forth below; (d) agrees to undertake a Supplemental Environmental Project ("SEP") in accordance with the "EPA Supplemental Environmental Projects Policy" ("SEP Policy") which became effective on May 1, 1998, (e) consents to the issuance of the Final Order incorporating this Consent Agreement; and (f) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Fiabila, and voluntarily and knowingly accepted by Fiabila, that the Respondent shall comply with the following terms and conditions:

1. Commencing on the effective date of the Order, Respondent, to the extent it has not already done so, shall immediately correct the violations alleged in paragraph "18", *supra*, of the Findings of Fact and Conclusions of Law and come into compliance and shall thereafter maintain compliance at its Mine Hill facility with all applicable organic air emission requirements set forth at 40 C.F.R. Section 265 Subparts BB(1993)(N.J.A.C. 7:26G-9.1(a)) and CC(1998)(N.J.A.C. 7:26G-9.1(a)), and 40 C.F.R. §265.31(1993)(N.J.A.C. 7:26G-9.1(a)) or in later versions of those regulations.
2. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, it is in compliance with all of the applicable

hazardous waste regulatory requirements with respect to management of hazardous waste (including organic hazardous waste) at its Mine Hill facility.

3. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Fiabila's obligation to comply with all applicable federal, state and local law and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste.
4. Nothing in this document is intended nor shall it be construed, to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Fiabila for having made any material misrepresentations or for Fiabila having provided materially false information in any document submitted to EPA.
5. Fiabila shall pay a civil penalty to EPA in the total amount of **TWENTY FOUR THOUSAND DOLLARS (\$24,000)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF FIABILA USA INCORPORATED*, and shall bear thereon the Docket Number *RCRA-02-2010-7108*. Payment of the penalty must be *received* at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO (the "Due Date").

If Fiabila chooses to make the payment by EFT, then Fiabila shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

- 6) Name of Respondent: Fiabila USA Incorporated.
- 7) Case Number: RCRA-02-2010-7108.

Such EFT must be received on or before forty-five (45) calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, Fiabila shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Gary H. Nurkin, Esq.
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

- a. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date for which the payment was required hereto to have been made.
- c. The civil penalties and stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the

United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state taxes. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

6. Respondent agrees to undertake the following SEP, such SEP is to be fully installed and operable within nine (9) months from the date the Final Order incorporating this Consent Agreement is issued by the Regional Administrator, which the parties agree is intended to secure significant environmental or public health protection through reducing emissions of volatile organic compounds (“VOC”). The SEP provides that Fiabila will replace its open vat that is used in mixing operations with a new closed unitary tank mixing system that contains an internal agitator. Through the installation and operation of this closed unitary tank mixing system, Fiabila intends to reduce its VOC emissions from its gel mixing operation by at least 75% annually which it estimates will result in an annual reduction of at least 330 pounds of VOC emissions from the present emissions. Respondent anticipates using this closed unitary tank mixing system for at least ten (10) years after the successful completion of the installation but as part of this SEP is only required to operate the closed unitary tank mixing system for at least two years.
7. The total expenditure for the SEP (including tank; external design, engineering and installation; engineering drawings; motors; and permits) shall not be less than \$180,000. Respondent shall provide EPA with an Expenditure Report including all documentation of the expenditures made in connection with the installation of the closed unitary tank mixing system and a SEP Completion Report.
8. Respondent shall submit the Expenditure Report to: Leonard Voo, Section Chief, RCRA Compliance Section, Division of Enforcement and Compliance Assistance, U.S. Environmental Protection Agency - Region 2, 290 Broadway, New York, New York 10007-1866. The Expenditure Report regarding expenditures for this SEP shall be submitted by December 31, 2011. The SEP Completion Report shall be submitted within 90 days after the closed unitary tank mixing system has been in operation for two years. The SEP Completion Report shall contain at least the following information:
 - (i) a description of the amount of emissions reduced through the usage of the closed unitary mixing tank system; and
 - (ii) a description of any operating problems encountered and the solutions thereto.

9. Respondent agrees that failure to timely submit the Expenditure Report or the SEP Completion Report for the SEP shall be deemed a violation of this Consent Agreement and Final Order, and Respondent may become liable for stipulated penalties as provided in paragraph 21(v) below.
10. Following receipt of the Expenditure Report and/or the SEP Completion Report, EPA will:
 - a. accept the report; or
 - b. reject the report, notify Respondent in writing of deficiencies in the report and grant Respondent an additional thirty (30) days in which to correct any deficiencies and to resubmit the report to EPA. If EPA, after allowing Respondent thirty (30) days to correct any deficiencies, finds that the same type of deficiencies remain, then EPA may seek stipulated penalties in accordance with paragraph 21(v) below.
11. If EPA elects to exercise option 10(b) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent will have an additional thirty (30) days (or such time as the parties may agree to) from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, Respondent may ask that the Complainant or his or her representative review the matter. Thereafter, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent.
12. In all documents or reports Respondent submits to EPA pursuant to the terms and conditions of this Consent Agreement, including the Expenditure Report, and the SEP Completion Report, Respondent shall, by an appropriate official sign and submit to EPA a certification under penalty of law that the information contained in such document or report is true, accurate and correct by signing the following statement:

“I certify that, to the best of my knowledge and belief, the information contained in or accompanying this document is true, accurate, and complete. In making this statement, I have relied in good faith on information furnished to me by employees or contractors of Fiabila USA Incorporated and/or upon my inquiry of the person or persons directly responsible for gathering the information, the information

submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

13. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through the implementation of the SEP project as herein required, whether the SEP has been satisfactorily completed, whether the Respondent has made good faith, timely effort to implement the SEP, and whether costs expended are creditable to the SEP shall be the sole determination of EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns to Respondent and provide it with an opportunity to respond, and/or correct the deficiencies. If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.
14. Respondent agrees that EPA may inspect its facility during reasonable business hours in order to confirm that the SEP is being performed properly and is in conformity with the representations made herein.
15. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation and financing of the SEP, and documentation supporting information in reports submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA and its authorized representatives access to such documentation and shall provide copies of such documentation to EPA within twenty (20) calendar days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA, in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO or two (2) years from the satisfactory completion of the SEP, whichever is later.
16. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent if it is later determined that Respondent has made any material misrepresentations or has provided materially false information in any document submitted in compliance with the terms and conditions of this Consent Agreement.

17. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal or state permit.
18. Respondent hereby certifies that, as of the date of its signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP pursuant to any federal or state law (including the Clean Air Act as amended, 42 U.S.C. § 7401 *et. seq.* and the Air Pollution Control Act found at N.J.S.A. 26:2C-1 *et. seq.*, or other requirement including federal or state rules related to the control of air pollutants such as VOCs; that with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP set forth in this Consent Agreement by any agreement, grant, or as injunctive relief in this or any other case; and that Respondent had not planned before September 2010 to perform any of the work that is part of this SEP.
19. Respondent certifies that it has not received and is not presently negotiating to receive, credit in any other enforcement action for the aforementioned SEP, and that Respondent in good faith believes that the SEP is in accordance with EPA's 1998 Final Supplemental Environmental Projects policy set forth at 63 *Federal Register* 24796 (May 5, 1998).
20. The Director of the Division of Enforcement and Compliance Assistance, Region 2 ("DECA"), or her representative, may grant an extension of the date of performance established in this CA/FO with regard to the SEP, if good cause exists for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing and shall not unreasonably be withheld or delayed.
21. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the submittal of the Expenditure Report, and a Completion Report as described in paragraphs "7" and "8" above, and the performance of the SEP described in paragraphs "6" and "7" above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (i) If the SEP is not undertaken, Respondent shall pay a stipulated penalty to the United States in the amount of \$72,000

(ii) If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money which was required to be spent on the SEP, Respondent shall not pay any stipulated penalty.

(iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States. Such penalty shall be calculated according to the following method:

$$\text{Stipulated Penalty} = \frac{[1 - (\text{amount SEP Cost expended})] \times \$72,000}{\$180,000}$$

(iv) If the SEP is not completed satisfactorily, but Respondent can document that it made good faith and timely efforts to undertake the project; and (b) certifies with supporting documentation, that at least 90 percent of the amount of money that was required to be spent was expended, Respondent shall not pay any stipulated penalty.

(v) For failure to submit by the deadlines the Expenditure Report and/or the SEP Completion Report required by paragraph "8" above, Respondent shall pay a stipulated penalty in the amount of \$150.00 for each day until the report is submitted.

Stipulated penalties above shall begin to accrue on the day after performance is due ("stipulated penalty due date"), and shall continue to accrue through the final day of the completion of the activity. Unless Respondent provides EPA with a writing pursuant to paragraph "22", below, all stipulated penalties are due and payable within thirty (30) days of the Respondent's receipt from EPA of a written demand for payment of the penalties. The method of payment shall be in accordance with the provisions of paragraph "5" above. Interest and a late payment handling charge will be assessed in the same manner and in the same amounts as specified in paragraph "5" above. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

22. After receipt of a demand from EPA for stipulated penalties pursuant to paragraph "21" above, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant).
23. The Director of DECA, Region 2 may, in her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action, such discretion to be reasonably and in good faith exercised. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of receipt.
24. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
25. Any public statement, oral or written, made by Respondent Fiabila making reference to the SEP shall include the following language, "this project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for RCRA violations."
26. The SEP to be completed by Respondent, described in paragraph "6" above, of this Consent Agreement, has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding.
27. If EPA determines that Respondent's certification in paragraphs "18" and "19" above, is inaccurate, then Respondent shall pay a stipulated penalty in the amount of seventy-two thousand dollars (\$72,000). Payment shall be transmitted using the same procedure specified in paragraph "5" above.
28. If in the future EPA believes that any of the information certified to, pursuant to paragraphs "2" and "12" above, is inaccurate, EPA will advise Respondent of its belief and its basis for such, and will afford Respondent an opportunity to respond to EPA. If the certification is materially inaccurate with respect to compliance, EPA may initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or any other applicable law.

29. This Consent Agreement is being voluntarily entered into by the parties in full and final settlement of all civil liabilities that attach or might have attached under the Act to Fiabila as a result of the violations alleged in the Complaint bearing Docket Number RCRA-02-2010-7108.
30. The provisions of this Consent Agreement shall be binding upon both EPA and Fiabila along with their authorized representatives and successors or assigns.
31. Fiabila explicitly waives its right to request or to seek any Hearing on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or the Findings of Fact and Conclusions of Law, above.
32. Fiabila waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with, and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
33. The undersigned signatory for Fiabila certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
34. Fiabila consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
35. The effective date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.
36. Each party hereto agrees to bear its own costs and fees in this matter.

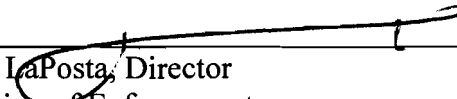
37. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

NAME: BERNARD DONNEAU
(PLEASE PRINT)

TITLE: J. Manager

DATE: 06-21-2011

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement
and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007
DATE: JUNE 24, 2011

In the Matter of Fiabila USA Incorporated
Docket No. RCRA-02-2010-7108

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Matthew E. Moloshok, Esq..
Hellring, Lindeman, Goldstein & Siegel LLP.
One Gateway Center
Newark, New Jersey 07102-5386

Mildred N. Bay

Dated: JUL 13 2011,
New York, New York