



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

August 3, 2011

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Morris Lowry, Vice President
NAP Industries, Inc.
667 Kent Avenue
Brooklyn, New York 11211

In the Matter of NAP Industries, Inc.
Docket No. RCRA-02-2010-7109

Dear Mr. Lowry:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2 on August 1, 2011.

The schedule for payment of the penalty is set forth in Paragraph 6 of the Consent Agreement. The first installment of twenty-thousand dollars (\$20,000) must be received on or before forty-five calendar days after the date of the signature of the Final Order by the Regional Administrator. The dates of the second and third installments are on or before February 1, 2012 and September 3, 2012. Kindly arrange for timely payment in accordance with the terms of the CA/FO. Thank you in advance for your cooperation in this matter.

If you have any questions, please contact me at (212) 637-3167.

Sincerely yours,

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel

cc: Ryan Karben, Esq.

Enclosure

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2011 AUG - 11 A 11:51
REGIONAL HEARING
CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:	x	
	:	
NAP Industries, Inc.	:	
	:	
Respondent.	:	CONSENT AGREEMENT AND FINAL ORDER
	:	
Proceeding under Section 3008 of the Solid Waste Disposal Act, 42 U.S.C. § 6928, as amended	:	Docket No. RCRA-02-2010-7109
	:	
	x	

U.S. ENVIRONMENTAL PROTECTION AGENCY
2011 JUN -14 A 11:51
REGIONAL HEARING
OFFICE

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 the “Act” or “RCRA”).

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated pursuant to it. Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance (“Complainant”) of the U.S. Environmental Protection Agency, Region 2 (“EPA”), has been duly delegated the authority to institute this action. Complainant issued a “Complaint and Notice of Opportunity for Hearing” to Respondent on September 21, 2010, bearing the docket number listed above. The Complaint alleged that Respondent had violated requirements of RCRA and regulations concerning the management of hazardous waste.

The parties have reached an amicable resolution of this matter and have agreed to this Consent Agreement and Final Order as a resolution of this proceeding without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).
2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New York prior notice of this action.

3. Respondent is NAP Industries, Inc. (“NAP” or “Respondent”) which operates a facility located at 667 Kent Avenue, Brooklyn, New York 11211 (the “Facility”).
4. Respondent is a “person” as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in Title 6 of the New York Codes, Rules, and Regulations (“6 NYCRR”) § 370.2(b).
5. The Facility has been manufacturing flexible packaging at its 70,000 square foot Facility since 1965. Respondent is able to print up to eight colors on plastic packaging and has clients in the food, chemical, industrial and medical industries.
6. Respondent has been and remains the “owner” and “operator” of the Facility.
7. Respondent currently generates and has been generating “solid waste,” as defined in 6 NYCRR § 370.2(b).
8. Respondent has been a “generator” of “hazardous waste” within the meaning of 6 NYCRR § 370.2(b) and § 371.1(d) at the Facility.
9. In or about 2009 through 2010, Respondent generated, and is continuing to generate, at least 1000 kilograms (“kg”) of hazardous waste in a calendar month at the Facility. It is considered to be a “large quantity generator” as that term is referred to in 6 NYCRR § 372.2.
10. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA, through a notification, dated April 1989, that it was a small quantity generator of ignitable hazardous waste at its Facility. EPA issued Respondent EPA Identification Number NYD982736423 for the Facility.
11. Respondent’s Facility was in operation before November 19, 1980. As a result, the Facility is “an existing hazardous waste management facility” as that term is defined in 6 NYCRR § 370.2(b).
12. On or about September 17, 2009 and February 2, 2010, duly designated representatives of EPA (“Inspectors”) conducted two RCRA Compliance Evaluation Inspections of the Facility (“Inspections”).
13. At the time of the September 2009 Inspection, there were open, unlabeled five-gallon containers of xylene and toluene solvents throughout the Facility. Respondent’s representative said the buckets were used to clean equipment or presses. The solvents are highly volatile and, in an open container, release volatile organic contaminants into the environment.
14. Respondent’s major waste stream is comprised of the solvents xylene and toluene which are used to clean the presses. Xylene and toluene, when disposed of, are considered “hazardous waste” as defined in 6 NYCRR § 371.1(d).

15. Respondent also generated and abandoned the following waste materials at the Facility: waste rags in open, unlabeled 55-gallon drums throughout the Facility and in a large open, unlabeled plastic container at the loading dock, and spent fluorescent light bulbs.
16. Respondent "abandoned" solvent-soaked rags on-site at the Facility by storing and/or accumulating them in open containers before, or in lieu of, disposing of them off-site.
17. At the time of the Inspections, ink and solvent spills were present throughout the Facility.
18. Prior to February 2, 2010, Respondent had been disposing of spent fluorescent bulbs in the municipal trash without making a determination about whether such solid waste constituted a hazardous waste.
19. At the time of the Inspections, Respondent did not have any spill materials, hazardous waste signs or emergency postings properly located at the Facility. Fire extinguishers were not placed near the central hazardous waste storage area. No emergency phone numbers were posted near the telephone located outside the hazardous waste storage area.
20. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about March 22, 2010, EPA issued an Information Request Letter ("IRL") and a Notice of Violation ("NOV") to Respondent regarding its management of hazardous waste at its Facility.
21. On or about May 18, 2010, Respondent submitted its response to EPA's March 2010 IRL/NOV.
22. On or prior to September 17, 2009, Respondent had not determined if each solid waste generated at its Facility constitutes a hazardous waste in violation of 6 NYCRR § 372.2(a)(2).
23. Subsection 6 NYCRR § 373-3.2(g) requires facility personnel to complete successfully a program of classroom 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 this Subpart.
24. Subsection 6 NYCRR § 373-3.2(g)(4) requires the owner or operator of a hazardous waste facility to maintain documents and records at the facility related to its employees' job descriptions and training in hazardous waste management.
25. At the time of the February 2, 2010 Inspection, Respondent's representative admitted to the Inspectors that Respondent did not offer any type of hazardous waste training to its employees.
26. Respondent's Facility has been a "storage" facility as that term is defined in 6 NYCRR § 370.2(b).
27. Pursuant to 6 NYCRR § 373-1.2(a), and Section 3005 of the Act, 42 U.S.C. § 6925, a RCRA permit or interim status is required for the storage of hazardous waste.
28. Respondent's Facility does not have interim status or a permit authorizing the storage of hazardous waste at its Facility.

29. 6 NYCRR § 372.2(a)(8)(ii) requires the generator to mark clearly on each container the date each period of accumulation begins so that the date is visible for inspection.
30. 6 NYCRR § 373-3.9(d)(3) requires the generator to mark clearly each container in storage areas with the words "Hazardous Waste" and with other words that identify the contents of the containers.
31. 6 NYCRR § 373-3.9(d)(1) requires containers holding hazardous waste always to be closed during storage, except when it is necessary to add or remove waste.
32. At the time of the September 2009 Inspection and, for some time prior thereto, hazardous waste containers of solvent in the solvent recovery system area did not have any labels or accumulation start dates. The containers were open, and waste was not being added or removed.
33. At the time of the February 2010 Inspection, a 55-gallon drum of hazardous waste solvent in the solvent recovery system area did not have any labels or accumulation start dates. The container was open.
34. Prior to February 2, 2010, Respondent failed to satisfy all the conditions set forth or cross-referenced in 6 NYCRR § 372.2(a)(8)(ii), including but not limited to the conditions set forth in 6 NYCRR §§ 373-1.1(d)(1)(iii), (iv), (xix), and (xx), which, if complied with, would have allowed Respondent to store hazardous waste without interim status or a permit for up to ninety (90) days.
35. At the time of the Inspections, Respondent stored hazardous waste at its Facility without having interim status or a permit in violation of 6 NYCRR § 373-1.2(a) and Section 3005 of the Act, 42 U.S.C. § 6925.
36. 6 NYCRR § 373-3.9(e) requires the generator to inspect areas where hazardous waste containers are stored at least weekly, and to look for leaking containers, deterioration of containers and problems in the containment system caused by corrosion or other factors.
37. At the time of the Inspections, Respondent was not conducting weekly inspections of the hazardous waste storage areas at the Facility.
38. Respondent's Facility constitutes a "hazardous waste facility" for purposes of 6 NYCRR § 373-3.4.
39. At the time of the Inspections, a telephone and the names and telephone numbers of emergency coordinators, and the location of fire extinguishers and spill control materials were not immediately available at or near the solvent recovery system area.
40. At the time of the Inspections, no spill materials, hazardous waste signs or emergency postings were observed at the Facility.
41. At the time of the Inspections, and prior thereto, Respondent had not made an attempt to make arrangements to familiarize police, fire departments, emergency response teams and local hospitals with the information set forth in 6 NYCRR § 373-3.3(g)(1)(i) concerning the Facility.

42. At the time of the Inspections, and prior thereto, Respondent's handling of hazardous waste and "hazardous waste constituents" and its storage and other management practices at the Facility presented an increased risk of a fire or explosion or an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water that could threaten human health or the environment.

43. At the time of the Inspections, and prior thereto, Respondent was not operating and maintaining the Facility in a manner that minimized the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents into the air, soil or surface water, which could threaten human health or the environment.

44. Pursuant to 6 NYCRR § 373-3.4(c) and (e) as cross-referenced in 6 NYCRR § 373-1.1(d)(1)(iii)(c)(5) an owner or operator must have a contingency plan that includes specified emergency-related information and the owner or operator must review and immediately amend the plan whenever there are changes in facility operations, emergency coordinators, or list of emergency equipment.

45. At the time of the Inspections, and at times prior thereto, Respondent did not have a contingency plan that included a list of emergency responders, list of emergency equipment and their location, or a description or schematic of emergency evacuation routes related to current Facility operations.

46. Pursuant to 6 NYCRR § 373-3.4(d)(2), an owner or operator must submit a copy of the contingency plan to all local police, fire departments, hospitals and emergency response teams. Pursuant to 6 NYCRR § 373-3.3(g), arrangements must be made to familiarize police, fire departments, hospitals 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 and roads inside the facility, and possible evacuation routes.

47. At the time of the Inspections, and at times prior thereto, the Respondent did not have a contingency plan that was distributed to all local police and fire departments and emergency response teams.

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, Complainant hereby enters into the following Consent Agreement with Respondent.

1. Commencing no later than the effective date of the Final Order issued in this matter, Respondent shall accumulate hazardous waste for a period of no greater than ninety (90) days before shipping these wastes off site (unless otherwise allowed under applicable rules).

2. Respondent shall either:

(a) starting no later than thirty (30) calendar days of the effective date of the Final Order, whenever accumulating or storing hazardous waste generated at the Facility, comply with all conditions necessary to be exempt from hazardous waste permitting requirements, including paragraphs "3" and "4" below; **or**,
(b) submit an application to the New York State Department of Environmental Conservation for a hazardous waste permit for its Facility, within thirty (30) calendar days of the effective date of this Compliance Order and comply with all applicable conditions for storage of hazardous waste without a permit, including but not limited to those stated in paragraphs "3" and "4" below, until it obtains such permit

3. Commencing no later than ten (10) calendar days of the effective date of the Final Order, Respondent shall ensure that containers containing hazardous waste are labeled with the words "Hazardous Waste", and with other words that identify the contents of the containers and ensure that all containers accumulating hazardous waste are closed except when hazardous waste is being removed or put into the containers.

4. Commencing no later than thirty (30) calendar days of the effective date of the Final Order, Respondent shall maintain documents confirming that every Facility employee has been instructed in the management of hazardous waste.

5. Commencing no later than thirty (30) calendar days of the effective date of the Final Order, to the extent not already prepared and implemented, Respondent shall prepare and implement a Contingency Plan and familiarize local authorities with the information in 6 NYCRR § 373-3.3(g)(1)(i) concerning the Facility.

6. Respondent shall pay, by cashiers or certified check, or electronic funds transfer ("EFT") a civil penalty in the amount of **Sixty Thousand Dollars (\$60,000) in three installments, as explained below**. The penalty shall be payable to the "Treasurer, United States of America." The check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of NAP Industries, Inc., Docket No. RCRA-02-2010-7109. Each check shall be mailed to:

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

If overnight delivery is preferred, Respondent may mail the check to the following:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box #979077
St. Louis, MO. 63101

If Respondent chooses to make payment by EFT, then Respondent shall provide the

following information to the 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 making the payment and of the case: In the Matter of NAP Industries, Inc.
- 7) Docket No. RCRA-02-2010-7109

Respondent shall also send copies of this payment to each of the following

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, N.Y. 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866
Attn: Karen Maples

The first installment amount of **Twenty Thousand Dollars (\$20,000)** must be received at the above address **on or before forty-five (45) calendar days after the date of signature of the Final Order (first due date)**, which is located at the end of this Final Order (the date by which the first payment must be received shall hereafter be referred to as the “due date”). The second installment amount of **Twenty Thousand Dollars (\$20,000)** must be received at the above address **on or before February 1, 2012 (second due date)**. The third installment amount of **Twenty Thousand Dollars (\$20,000)** must be received at the above address **on or before September 3, 2012 (third due date)**.

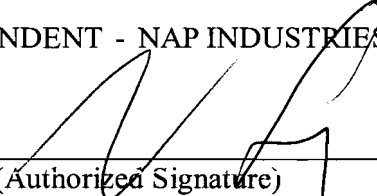
- a. If Respondent fails to pay any of the installments required above, by its due date, Respondent shall also be liable to EPA for an additional stipulated penalty of One Thousand Dollars (\$1,000) for each such failure. All stipulated penalties for failure to pay a penalty installment on time are due and payable within thirty (30) calendar days of Respondent’s receipt from EPA of a written demand for payment of the penalty. All stipulated penalties shall be made in accordance with the payment instructions above regardless of whether EPA has notified Respondent of the violation or has made a demand for payment, but need only be paid on demand.

- b. Failure to pay the full amount of the penalty, or any stipulated penalty demanded by EPA, according to the provisions 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; and
 - c. Further, interest will be assessed at the annual rate of one percent (1%) established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the unpaid amount of the penalty from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each payment for each thirty (30) day period (or any portion thereof) following the deadline for the payment should any balance remain unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the deadline for the payment.
8. For purposes of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the specific factual allegations contained in the Complaint; and (c) neither admits nor denies the above Findings of Fact and Conclusions of Law in this Consent Agreement.
9. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
10. This CA/FO is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve upon full payment of the penalty, and any stipulated penalty due, the civil and administrative claims specifically alleged in the Complaint against Respondent. Nothing herein shall be read to preclude EPA, or the United States on behalf of EPA, from pursuing the remedies stated in 40 C.F.R. Section 22.18(c) for any violations of law.
11. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
12. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
13. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized corporate representatives and successors or assigns.
14. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer, 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.

15. Each party hereto agrees to bear its own costs and fees in this matter.
16. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

**In the Matter of NAP Industries, Inc.
Docket Number RCRA-02-2010-7109**

RESPONDENT - NAP INDUSTRIES, INC:

BY: 
(Authorized Signature)

NAME: MORRIS CAR
(PLEASE PRINT)

TITLE: ✓ /

DATE: 7/21

COMPLAINANT:

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

DATE: _____

15. Each party hereto agrees to bear its own costs and fees in this matter.
16. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

In the Matter of NAP Industries, Inc.
Docket Number RCRA-02-2010-7109

RESPONDENT - NAP INDUSTRIES, INC:

BY: _____
(Authorized Signature)

NAME: _____
(PLEASE PRINT)

TITLE: _____

DATE: _____

COMPLAINANT:

DLAHL

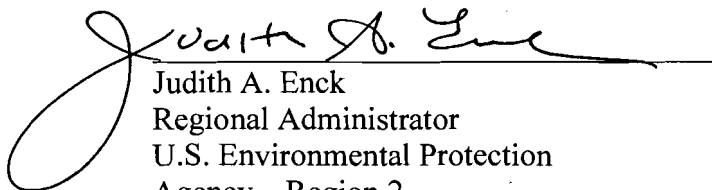
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

DATE: 7/14/11

**Re: In the Matter of NAP Industries, Inc.
Docket Number RCRA-02-2010-7109**

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.



Judith A. Enck
Regional Administrator
U.S. Environmental Protection
Agency – Region 2
290 Broadway
New York, New York 10007-1866

Date: 8/1/11

**Re: In the Matter of NAP Industries, Inc.
Docket Number RCRA-02-2010-7109**

CERTIFICATE OF SERVICE

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number RCRA-02-2010-7109 in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

Copy by Certified Mail,
Return Receipt Requested

Morris Lowry, Vice President
NAP Industries, Inc.
667 Kent Avenue
Brooklyn, New York 11211

Copy by Regular Mail

Ryan Karben, Esq.
11 Tara Drive
Pomona, New York 10970

Dated: New York, New York

AUG 03 2011

Mildred N. Baez