



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2009 FEB 11 AM 10:37  
REGIONAL HEARING  
CLERK

FEB 11 2009

Thomas Spiesman, Esq.  
Porzio Bromberg & Newman, PC  
100 Southgate Parkway  
P.O. Box 1997  
Morristown, New Jersey 07962-1997

Re: In the Matter of Wallace Silversmiths de Puerto Rico, Ltd.;  
Docket No: RCRA-02-2008-7109

Dear Mr. Spiesman:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order (CA/FO) issued under Section 3008 of the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6928, resolving the above referenced action. In accordance with her December 16, 2008 Order on Motion for Extension of time, a copy of this CA/FO is being sent to Chief Administrative Law Judge Biro in lieu of a prehearing exchange.

Please do not hesitate to contact me if you have any questions. It was a pleasure working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy R. Chester".

Amy R. Chester  
Assistant Regional Counsel  
212 637-3213

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 FEB 11 AM 10:37  
REGIONAL HEARING  
CLERK

In The Matter of:

Wallace Silversmiths de Puerto Rico, Ltd.

Respondent.

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

**CONSENT AGREEMENT AND FINAL  
ORDER**

Docket No.: RCRA-02-2008-7109

**PRELIMINARY STATEMENT**

This civil administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding.

The Respondent is Wallace Silversmiths de Puerto Rico, Ltd. ("Wallace" or "Respondent"). The Wallace facility is located in Calle B in Industrial Retiro, San German, Puerto Rico.

Pursuant to Section 3006 of the Act, 42 U.S.C. § 6926, the Administrator of EPA may, if certain criteria are met, authorize a state to operate "hazardous waste management" and/or "used oil" programs in lieu of the federal programs. The Commonwealth of Puerto Rico is a "State" as that term is defined by Section 1004(31) of the Act, 42 U.S.C. § 6903(31), and therefore within

the meaning of this provision. The Commonwealth of Puerto Rico, however, is not authorized by EPA to conduct hazardous waste or used oil management programs under Section 3006 of RCRA, 42 U.S.C. § 6926. Accordingly, EPA retains primary responsibility for the implementation and enforcement of RCRA's hazardous waste and used oil regulations in the Commonwealth of Puerto Rico. These regulations are set forth in 40 C.F.R. Parts 260 through 279.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Wallace on about September 18, 2008. The Complaint alleged that Wallace violated specific provisions of RCRA and its implementing regulations concerning the management of hazardous waste and used oil. Complainant and Wallace conducted settlement negotiations which led to this agreement.

Complainant and Wallace agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

#### **EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Wallace Silversmiths de Puerto Rico, Ltd. (hereinafter "Wallace" or "Respondent"). Wallace is a wholly-owned subsidiary of Lifetime Brands, Inc., a Delaware corporation.
2. Since on or about April 27, 2006, Wallace has been conducting silverware manufacturing operations at a facility located in Calle B in Industrial Retiro, San German, Puerto Rico.
3. Wallace's immediate predecessor at the site, Wallace International de P.R., conducted manufacturing operations at the Calle B, San German facility since at least 1986. Wallace

International de P.R. is a subsidiary of Syratech Corporation. According to Respondent, on or about April 27, 2006, certain assets and the related business of Wallace International de P.R. were purchased by Syratech Acquisition Corporation, a subsidiary of Lifetime Brands, Inc. (hereafter referred to as the "Purchase.") The Purchase included the Lease Agreement between Wallace International de P.R. and the Puerto Rico Industrial Development Company (PRIDCO) pertaining to the land and certain buildings which were used by Wallace International de P.R. for its manufacturing operations. On or about April 25, 2006, Syratech Acquisition Corporation assigned the Lease Agreement to Wallace.

4. Wallace and/or the predecessor companies at the site have been conducting manufacturing operations at the Calle B San German facility since 1973. These operations include the casting and finishing of table silverware and flatware. Operations occur in two buildings at the facility. These buildings are hereafter referred to as "Building 1" and "Building 2."
5. Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
6. The Calle B, Industrial Retiro, San German, Puerto Rico location where Respondent conducts its manufacturing operations constitutes a "facility" as that term is defined in 40 C.F.R. § 260.10.
7. Respondent is the "operator" of the facility as that term is defined in 40 C.F.R. § 260.10.
8. In or about December 1980, Respondent's predecessor (International Silver de P.R., Inc.) notified EPA that it generates hazardous wastes at the facility.
9. In December 1980, EPA issued International Silver de P.R., Inc. EPA Identification Number PRD090405648.

10. Respondent never submitted a notification to EPA updating or amending the predecessor company's 1980 hazardous waste notification. Following the April 2006 Purchase, Respondent and/or its parent corporation (Lifetime Brands, Inc.) assumed the EPA identification number. Neither Respondent nor the predecessor companies submitted Part A or Part B of a RCRA permit application to EPA regarding the San German facility.
11. Neither Respondent nor the predecessor companies qualified for interim status or obtained a permit for the San German facility pursuant to Section 3005 of RCRA and 40 C.F.R. § 270.10(e).
12. As of at least July 26, 2006, Respondent was a hazardous waste "small quantity generator" as that term is defined in 40 C.F.R. § 260.10. Respondent stored hazardous waste at its facility as the term "storage" is defined in 40 C.F.R. § 260.10.
13. As of at least July 26, 2006, Respondent had not determined if certain materials generated at its facility constituted a hazardous waste.
14. Wallace's failure to determine whether each solid waste generated at its facility constituted a hazardous waste is a violation of 40 C.F.R. § 262.11.
15. On or before July 26 and 27, 2006, Wallace failed 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 through numerous actions or inactions including but not limited to:
  - Placing drums containing used oil on cracked and broken asphalt behind Building 2. Several of these drums were rusted and one was visibly bulging. Releases would directly impact the soil or migrate to adjacently located storm water culverts potentially contaminating storm water entering the drainage system.

- Placing both discarded: i) production equipment visibly contaminated with oil and other process liquids; and ii) buffing wheels visibly contaminated with oxidized silver residuals, directly on the soil behind Building 2. Any releases of hazardous constituents and/or oil from the equipment would directly impact the soil.
- Placing fluorescent bulbs, which may contain mercury, directly on an earthen berm located at the facilities property line. Some of these bulbs were broken. Any releases of mercury would directly impact the soil.
- Operating a Greco Brothers Ultrasonic Degreaser (“Greco Machine”) that used TCE to clean sterling flatware. The Greco Machine employs an open tank process, permitting significant losses of TCE vapor to the ambient air with accompanying potential human health risks.
- Spilling TCE and related waste residues on the floor in the room housing the Greco Machine. Floor drains in this room were connected to the facility’s evaporator. The evaporator was not designed to manage volatile organic solvents.
- Filtering oil from water across three drums using a “home-made” filtering process causing spills of oil/water liquids. These spilled liquids accumulated in or around the storm water culvert potentially contaminating storm water entering the drainage system.
- Failing to ensure the proper management of TCE related hazardous waste. From January 1992 through approximately December 26, 2006 the facility used approximately 171,500 pounds of TCE. Respondent cannot account for the disposal of any TCE-contaminated hazardous waste generated until July 2006 when it sent approximately 5,380 pounds of TCE-contaminated hazardous waste off-site for disposal. The facility’s failure to track and ensure the proper disposal of TCE contaminated hazardous waste may have resulted in the release of tens of thousands of pounds of TCE hazardous waste or hazardous waste constituents to air, soil, surface or groundwater during this time period.

16. Wallace’s failure to maintain and operate its facility 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, constitutes a violation of 40 C.F.R. § 265.31.
17. During at least July 26 and 27, 2006, Wallace: i) stored hazardous waste in at least one

open container during periods when waste was neither being added to nor removed from that container; ii) failed to separate containerized hazardous waste and incompatible materials by means of a dike, berm, wall or other device; and iii) tightly packed Building 2's chemical storage area creating conditions which made it difficult for inspectors to look for and detect leaks from, and/or deterioration of, the containers stored in this area.

18. Wallace's failure to: i) keep all containers holding hazardous waste closed except when necessary to add or remove waste; ii) separate hazardous waste and incompatible materials; and iii) conduct effective weekly inspections constitute violations of 40 C.F.R. § 265.173, 40 C.F.R. § 265.174 and 40 C.F.R. § 265.177, respectively.
19. As of at least July 31, 2006: i) hazardous waste had been stored at Respondent's facility for a period of time greater than 270 days; and ii) Respondent had failed to satisfy the requirements for generators set forth in 40 C.F.R. § 262.34(d) – (e) which, if complied with, would have allowed Respondent to store hazardous waste without interim status or a permit for up to 180 (or 270) days.
20. Respondent never obtained interim status or a permit from EPA authorizing the storage of hazardous waste at its facility.
21. Respondent's storage of hazardous waste at its facility prior to July 31, 2006 without a permit constitutes a violation of 40 C.F.R. § 270.1 and Section 3005 of the Act, 42 U.S.C. § 6925.
22. During at least July 26 and July 27, 2006, Respondent accumulated used oil in unlabeled drums and cans, some of which displayed rusting and deterioration.
23. Respondent's failure to store used oil in properly labeled containers that are in good

condition constitutes a violation of 40 C.F.R. § 279.22.

### **CONSENT AGREEMENT**

Pursuant to Sections 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties and Wallace knowingly and voluntarily agrees as follows:

1. Upon the effective date of this Consent Agreement and Final Order, Respondent shall:
  - a. make hazardous waste determinations on all solid waste that it generates at its facility pursuant to 40 C.F.R. § 262.11.
  - b. comply with all applicable container standards set forth in Subpart I of 40 C.F.R. Part 265, including: keeping hazardous waste containers closed except when necessary to add or remove waste; conducting thorough and effective inspections of all hazardous waste storage areas on a weekly basis; and separating incompatible wastes by a wall, berm or other physical mechanism;
  - c. minimize the risk of fires, explosions or unplanned releases of hazardous waste and constituents pursuant to 40 C.F.R. § 265.31 through actions such as but not limited to ensuring that chemicals and other hazardous materials are stored and managed in a manner which minimizes the possibility of a fire, explosion, and/or release, including minimizing the potential for incompatible substances to come in physical contact with each other, particularly during fires and spills;
  - d. comply with all applicable regulations for used oil generators set forth in 40 C.F.R. Part 279 including: storing used oil in containers that are in good condition; and labeling the containers as containing used oil;
  - e. and otherwise comply with all applicable provisions for generators set forth in 40 C.F.R. § 262.34, including storage of waste for no more than 180 days (or 270 days if shipping greater than 200 miles) and compliance with Subparts C and I of 40 C.F.R. Part 265, or alternatively, obtain and comply with a hazardous waste permit pursuant to the provisions of 40 C.F.R. Part 270.
2. Within thirty days of the effective date of this Consent Agreement and Final Order, Respondent shall send a Compliance Report to EPA detailing the status of its compliance



with the requirements set forth in Paragraph 1 of this Consent Agreement. This Compliance Report shall include all appropriate documentation and evidence. The Compliance Report should be sent to:

Carl Plössl  
Environmental Engineer  
Senior Enforcement Team  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007-1866

3. For the purpose of this proceeding, Wallace admits the jurisdictional allegations of the Complaint as applied to its facility and neither admits nor denies specific factual allegations contained in the Complaint or the Findings of Fact or Conclusions of Law in this CA/FO.
4. Wallace shall pay a civil penalty to EPA in the total amount of one hundred and two thousand dollars (\$102,000). Such payment shall be made by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payments are made by checks, then the checks 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

Each check shall be identified with a notation thereon: **In the Matter of Wallace**

**Silversmiths de Puerto Rico, LTD,** and shall bear thereon the Docket Number:

**RCRA-02-2008-7109.** If Respondent chooses to make the payment by EFT, then

Respondent 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: "D68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Wallace Silversmiths de Puerto Rico, LTD.**
- 7) Case Number: **RCRA-02-2008-7109.**

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Amy Chester  
Assistant Regional Counsel  
U.S. Environmental Protection Agency-Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

and

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency- Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Payment must be **received** on or before 45 calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO. The date by which payment must be received shall hereinafter be referred to as the "due date."

- a. Failure to pay the civil penalty in full according to the above provisions 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. Further, if the payment is not received on or before the due date, interest will be

assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.

- c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
5. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the specific civil and administrative claims alleged in the Complaint issued in this matter pursuant to Section 3008 of RCRA. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.
  6. Wallace waives any right 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

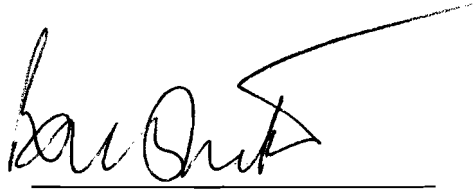
Agreement and issue the attached Final Order.

7. This CA/FO does not waive, extinguish, or otherwise affect Wallace's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, Commonwealth or local law, regulation or permit.
8. Each party shall bear its own costs and fees in this matter.
9. The representative of Wallace signing 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. The provisions of this Consent Agreement shall be binding upon Wallace, and its officials including authorized representatives and successors or assigns.
10. Wallace consents to service upon Wallace by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
11. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT:

Wallace Silversmiths de Puerto Rico, Ltd.

BY:



NAME:

Ronald Shifftan

TITLE:

Vice Chairman

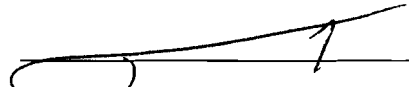
DATE:

1/12/09

COMPLAINANT:

United States Environmental Protection  
Agency – Region 2

BY:



NAME:

Dore LaPosta, Director

TITLE:

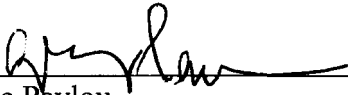
Division of Enforcement &  
Compliance Assistance

DATE:

FEBRUARY 6, 2009

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.

  
\_\_\_\_\_  
George Pavlou  
Acting Regional Administrator  
EPA-Region 2

DATE: 2/9/09

CERTIFICATE OF SERVICE

I hereby certify that on the FEB 11 2009 I caused a copy of the Consent Agreement and Final Order entered in In the Matter of Wallace Silversmiths de Puerto Rico, Ltd., Docket No: RCRA-02-2008-7109, to be sent to the following persons in the manner indicated:

**By United States First Class Mail:**

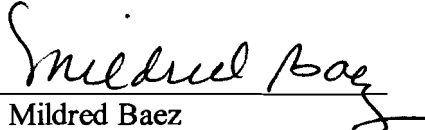
The Honorable Susan L. Biro  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
United States Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460  
Fax (202) 565-0044

Thomas Spiesman, Esq.  
Porzio Bromberg & Newman, PC  
100 Southgate Parkway  
P.O. Box 1997  
Morristown, New Jersey 07962-1997

**By Hand Delivery:**

Karen Maples  
Regional Hearing Clerk  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007  
Fax (212) 637-3199

Date: FEB 11 2009

  
Mildred Baez