



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 18 2009

Robert A. Malinoski, Esq.
Gunster, Yoakley & Stewart, P.A.
Las Olas Centre
450 East Las Olas Blvd., Suite 1400
Fort Lauderdale, Florida 33301-4206

RE: J.D. International Lighting, Inc. - Executed Consent Agreement and Final Order, Docket No. RCRA-04-2009-4255(b)

Dear Mr. Malinoski:

Please find enclosed a copy of the fully executed Consent Agreement and Final Order (CA/FO) docketed RCRA-04-2009-4255(b), for J.D. International Lighting, Inc.. The CAFO was effective upon filing, and payment of the civil penalty of \$105,200.00 is due within thirty (30) days of the date of filing. Payment should be made pursuant to the instructions found in Section VI. of the enclosed CA/FO.

Please do not hesitate to contact me at (404) 562-9539 with any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bonnie Sawyer".

Bonnie Sawyer
Associate Regional Counsel

Enclosure

Internet Address (URL) • <http://www.epa.gov>

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2009-4255(b)
)	
J.D. International Lighting, Inc.)	Proceeding under Section 3008(a)
681 SW 16 th Terrace)	of the Resource Conservation and
Pompano Beach, Florida 33069)	Recovery Act, 42 U.S.C. § 6928(a)
)	
)	
Respondent.)	

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CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921, *et seq.* This action is seeking the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, and 273; and requirements under applicable state programs authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926; Florida Statutes Section 403.702 *et seq.*, and regulations promulgated pursuant thereto and set forth at Florida Administrative Code Annotated r. 62.710 and 62-730 *et seq.*; 415 Illinois Compiled Statutes 4/1 *et seq.*, and regulations promulgated pursuant thereto and set forth at Title 35 of the Illinois Administrative Code §§ 702-739; Chapter 459 of the Nevada Revised Statutes and regulations promulgated pursuant thereto and set forth at the Nevada Administrative Code, Chapter 459; the New Jersey Solid Waste Management Act, N.J.S.A 13:1E-1 *et seq.* and regulations promulgated pursuant thereto and set forth at the New Jersey Administrative Code 7:26G; and the Texas Health and Safety Code Annotated, Chapter 361, and regulations promulgated pursuant thereto and set forth at Title 30 of the Texas Administrative Code, Chapter 335.
2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action and all allegations, as described herein. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with

40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is J.D. International Lighting, Inc., a corporation headquartered in Florida and doing business in the States of Florida, Illinois, Nevada, New Jersey, and Texas. Respondent operates facilities at: 681 SW 16th Terrace, Pompano Beach, Florida 33069; 840 Mark Street, Elk Grove Village, Illinois 60007; 4320 North Lamb Boulevard, Las Vegas, Nevada 89115; 130 Mount Holly Bypass, Suite 1, Lumberton, New Jersey 08048; and 4430 Bronze Way, Dallas, Texas 75326 (collectively "Facilities").

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the States of Florida, Illinois, Nevada, New Jersey, and Texas received final authorization from EPA to enforce specified portions of the respective State hazardous waste programs in lieu of the federal program set forth in RCRA. The requirements of the authorized State programs are found at Fla. Stat. § 403.702 *et seq.* and Fla. Admin. Code Ann. r. 62-730 *et seq.*; 415 Ill Comp. Stat. 5/1 *et seq.* and 35 Ill. Adm. Code §§ 702-739; Nev. Rev. Stat. Ch 459 and Nev. Admin. Code, Chapter 459; N.J.S.A. 13:1E-1 *et seq.* and N.J. Admin. Code 7:26G; and Tex. Health & Safety Code Ann. Ch. 361 and 30 Tex. Adm. Code, Chapter 335. For purposes of this Order, citations herein to the requirements of RCRA and 40 C.F.R. Parts 124 and 260 through 268, and Parts 270 and 273 shall constitute a citation to the equivalent requirements of the respective state program.
7. Although EPA has granted the States of Florida, Illinois, Nevada, New Jersey, and Texas authority to enforce their own hazardous waste programs, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
8. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the States of Florida, Illinois, Nevada, New Jersey, and Texas before issuance of this CA/FO.
9. Pursuant to 40 C.F.R. § 261.2, a "solid waste" is any discarded material that is not otherwise excluded by regulation.
10. Pursuant to 40 C.F.R. § 261.3, a solid waste is a "hazardous waste" if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), and it meets any of the criteria set out in this section.
11. Pursuant to 40 C.F.R. § 260.10, a "generator" is defined as "any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation."

12. Pursuant to 40 C.F.R. § 261.5(a), a generator is a conditionally exempt small quantity generator if he generates no more than 100 kilograms of hazardous waste in a calendar month.
13. Pursuant to 40 C.F.R. § 261.5(g)(1), a conditionally exempt small quantity generator must comply with 40 C.F.R. § 262.11, which requires a person who generates a solid waste as defined in 40 C.F.R. § 261.2 to determine if that waste is a hazardous waste using the methods listed in this section.
14. Pursuant to 40 C.F.R. § 261.5(g)(3), a conditionally exempt small quantity generator must ensure the delivery of its hazardous waste to an offsite treatment, storage or disposal facility that meets the criteria specified in 40 C.F.R. § 261.5(g)(3)(i), (ii), (iii), (iv), (v), (vi), or (vii).
15. Pursuant to Fla. Stat. § 403.7186(3), spent mercury-containing lamps shall not knowingly be incinerated in any municipal incinerator or solid waste landfill.

IV. EPA ALLEGATIONS AND DETERMINATIONS

16. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
17. Respondent is the "owner" and "operator" of "facilit[ies]" located at 681 SW 16th Terrace, Pompano Beach, Florida 33069; 840 Mark Street, Elk Grove Village, Illinois 60007; 130 Mount Holly Bypass, 4320 North Lamb Boulevard, Las Vegas, Nevada 89115; +Suite 1, Lumberton, New Jersey 08048; and 4430 Bronze Way, Dallas, Texas 75326, as those terms are defined in 40 C.F.R. § 260.10.
18. Respondent, as a result of its management of hazardous waste light bulbs at its Facilities, is a generator of hazardous waste. Respondent generates less than 100 kilograms of hazardous waste in a calendar month at each of its Facilities.
19. On June 4, 2008, a representative of EPA and a representative of the State of Florida performed a RCRA compliance evaluation inspection (CEI) of Respondent's facility located at 681 SW 16th Terrace, Pompano Beach, Florida 33069. During the CEI, EPA learned that Respondent operated facilities at 840 Mark Street, Elk Grove Village, Illinois 60007; 4320 North Lamb Boulevard, Las Vegas, Nevada 89115; 130 Mount Holly Bypass, Suite 1, Lumberton, New Jersey 08048; and 4430 Bronze Way, Dallas, Texas 75326.
20. On July 28, 2008, EPA received a response to a Request for Information ("RFI") under Section 3007 of RCRA, 42 U.S.C. § 6927, which provided information concerning operations and waste management practices at each of Respondent's Facilities. During good faith negotiations, Respondent provided additional information that detailed alleged violations concerning waste management practices at its other Facilities. These violations were similar to the alleged violations found by EPA during the CEI of Respondent's Pompano Beach, Florida facility.
21. Based on the CEI, RFI and subsequent information provided by Respondent, EPA determined Respondent was generating waste light bulbs at all its Facilities without making a hazardous waste determination. EPA therefore alleges the Respondent has violated

40 C.F.R. § 261.5(g)(1) at its Facilities by failing to make a hazardous waste determination for its waste light bulbs.

22. Based upon the CEI, RFI and subsequent information provided by Respondent, the EPA determined Respondent sent its hazardous waste light bulbs from all its Facilities to off-site treatment, storage or disposal facilities that did not meet the criteria of 40 C.F.R. § 261.5(g)(3)(i), (ii), (iii), (iv), (v), (vi), or (vii). EPA therefore alleges Respondent violated 40 C.F.R. § 261.5(g)(3) at its Facilities by failing to ensure that its hazardous waste was delivered to an appropriate off-site treatment, storage or disposal facility.
23. Based upon the CEI and RFI, the EPA determined Respondent sent spent mercury-containing lamps from its facility located at 681 SW 16th Terrace, Pompano Beach, Florida to a municipal incinerator. EPA therefore alleges Respondent violated Fla. Stat. § 403.7186(3) by knowingly sending spent mercury-containing lamps from this facility to a municipal incinerator.

V. TERMS OF AGREEMENT

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

24. For the purpose of this CA/FO, Respondent admits the jurisdictional allegations set out above.
25. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent neither admits nor denies the factual allegations contained in this CA/FO.
26. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations contained herein, and its right to appeal this CA/FO.
27. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the violations alleged herein, on the basis of any issue related to the Paperwork Reduction Act.
28. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.
29. The parties agree that the settlement of the allegations in Section IV above are in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
30. The parties agree that they will pay their own costs and attorney's fees.
31. Respondent, by signing this CA/FO, certifies that all violations alleged in this CA/FO have been corrected.
32. Complainant has conferred with Regions 2, 5, 6, and 9 of the EPA with regard to this CA/FO, and certifies that Respondent's compliance with the terms of this CA/FO shall resolve Respondent's violations of RCRA alleged in this CA/FO for all of Respondent's

Facilities identified in paragraph 17 above, and represents a full and complete settlement for these violations.

VI. CIVIL PENALTY

33. Respondent consents to the payment of a civil penalty in the amount of \$105,200.00 within thirty (30) calendar days of the effective date of this CA/FO with regard to the alleged violations at all of Respondent's Facilities asserted in Section IV above.
34. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearhouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the facility name and docket number for this matter shall be referenced on the face of the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

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

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

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

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

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking

Environmental Protection Agency
808 17th Street NW
Washington, DC 20074
Contact: Jesse White, 301-887-6548

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

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

and to:

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

35. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. See 40 C.F.R. § 13.11 (b) and (c). Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within thirty (30) calendar days after the effective date of this CA/FO. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- a. Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
 - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) calendar day period over which an unpaid balance remains.
 - c. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
36. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 28 U.S.C. § 162(f).

VII. PARTIES BOUND

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

VIII. RESERVATION OF RIGHTS

40. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CA/FO.
41. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any claim (civil or criminal), 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 Respondent's facilities.
42. Notwithstanding any other provisions of the CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facilities may present an imminent and substantial endangerment to human health or the environment.
43. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
44. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
45. The provisions of this CA/FO shall be deemed satisfied upon Respondent's full implementation of the actions required in this CA/FO.

IX. OTHER APPLICABLE LAWS

46. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. SERVICE OF DOCUMENTS

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

Bonnie Sawyer
Associate Regional Counsel
U.S. EPA- Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9539

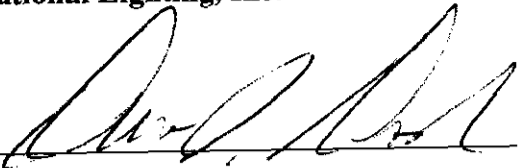
48. A copy of any documents that Complainant files in this action shall be sent to the following person who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Robert A. Malinoski, Esq.
Gunster, Yoakley & Stewart, P.A.
Las Olas Centre
450 East Las Olas Blvd., Suite 1400
Fort Lauderdale, Florida 33301-4206

XI. SEVERABILITY

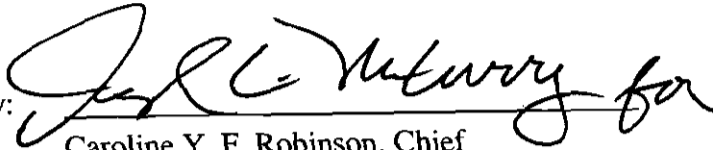
49. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions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

J.D. International Lighting, Inc.

By: 
David J. Dodich
President

Dated: 7/16/09

U.S. Environmental Protection Agency

By:  for
Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Dated: 7/30/09

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket Number: RCRA-04-2009-4255(b)
)	
J.D. International Lighting, Inc.)	Proceeding under Section 3008(a)
681 SW 16 th Terrace)	of the Resource Conservation and
Pompano Beach, Florida 33069)	Recovery Act, 42 U.S.C. § 6928(a)
)	
)	
Respondent.)	
_____)	

FINAL ORDER

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

BEING AGREED, IT IS SO ORDERED this 11th day of August, 2009.

BY: J. Scott
AS A. Stanley Meiburg
Acting Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of J.D. International Lighting, Inc., Docket Number: RCRA-04-2009-4255(b), on the parties listed below in the manner indicated:

Bonnie Sawyer
OEA - 13th Floor
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

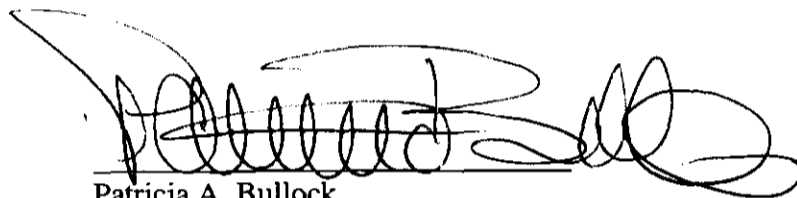
(Via EPA's internal mail)

Robert A. Malinoski, Esq.
Gunster, Yoakley & Stewart, P.A.
Las Olas Centre
450 East Las Olas Blvd., Suite 1400
Fort Lauderdale, Florida 33301-4206

(Via Certified Mail- Return Receipt Requested)

Date

8/18/09



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-9511