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BY OVERNIGHT DELIVERY, RETURN RECEIPT REQUESTED

September 29, 2010

Wanda Santiago, Regional Hearing Clerk,
US EPA, Region 1
5 Post Office Square
Mail Code -ORA18-1
Boston, MA 02109-3912

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RE: In the Matter of: Hudson Color Concentrates, Docket Number: RCRA-01-2010-0026, Respondent's Answer to Administrative Complaint and Order

Dear Ms. Santiago:

This office represents Hudson Color Concentrates ("Hudson" or the "Respondent") of 50 Francis Street, Leominster, MA 01453. On or about September 1, 2010, Hudson received an Administrative Complaint and Order from the United States Environmental Protection Agency ("EPA") (the "Complaint"), which included three counts representing violations of Section 3007 of the Resource Conservation and Recovery Act ("RCRA"); and penalties assessed in the amount of \$68,644.

Pursuant to the requirements of 40 C.F.R. 22.15, attached please find Hudson's answer (the "Answer") to the allegations in the Complaint.

Sincerely yours,



Susan A. Bernstein, Esq.

Attachment

cc: Steven C. Schlang, Esq. Enforcement Counsel, U.S. EPA-Region 1
Joanna B. Jerison, Esq., Legal Enforcement Manager, Office of Environmental Stewardship (without Attachment), U.S. EPA
Donald R. MacLeod, RCRA Technical Enforcement Office, U.S. EPA
Lloyd A. Watt, President, Hudson Color Concentrates (by email)
Gary Carr, Technical Director, Hudson Color Concentrates (by email)
William Prendergast, Hudson Color Concentrates (by email)
Kristina Richards, Woodard & Curran (by email)

United States
Environmental Protection Agency
Region 1

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In the matter of:)	
Hudson Color Concentrates)	
A division of)	EPA Docket Number
L & A Molding Corporation)	RCRA-01-2010-0026
50 Francis Street)	
Leominster, MA 01453,)	RESPONDENT's ANSWER
Respondent)	TO ADMINISTRATIVE
)	COMPLAINT and REQUEST
)	FOR HEARING
EPA I.D. No. MAC300012440)	
)	
Proceeding under Section)	
3008(a) of the Resource)	
Conservation and Recovery)	
Act, 42 USC §6928(a))	

Now comes the respondent ("Respondent") Hudson Color Concentrates ("Hudson") with its answer (the "Answer") to the allegations in the Administrative Complaint, Compliance Order, Notice of Opportunity for Hearing, and Notice of Opportunity to Confer (the "Complaint") served on the Respondent by the United States Environmental Protection Agency ("EPA").

I. STATEMENT OF AUTHORITY

The Respondent admits that the statements in Section I are conclusions of law for which no response is required.

II. NATURE OF ACTION

1. The Respondent admits that the statements in paragraph 1 are conclusions of law for which no response is required.

2. The Respondent admits that the statements in paragraph 2 are conclusions of law for which no response is required.

III. RCRA STATUTORY AND REGULATORY FRAMEWORK

3. The statements in paragraph 3 are conclusions of law for which no response is required.

4. The statements in paragraph 4 are conclusions of law for which no response is required.

5. The statements in paragraph 5 are conclusions of law for which no response is required.

6. The statements in paragraph 6 are conclusions of law for which no response is required.

7. The statements in paragraph 7 are conclusions of law for which no response is required.

8. The statements in paragraph 8 are conclusions of law for which no response is required.

IV. GENERAL ALLEGATIONS

9. The Respondent admits that the statement in paragraph 9 is correct.

10. The statements in paragraph 10 are conclusions of law for which no response is required.

11. The Respondent admits that the statement in paragraph 11 is correct.

The Respondent states that it stopped using lead in December 2009.

12. The Respondent finds the first statement in paragraph 12 is a conclusion of law for which no response is required. The Respondent admits in part and denies in part that the second statement in paragraph 12 is correct. The Respondent generated loose pigment residue which contained lead and/or other metals, which it characterized as non-hazardous based on analytical information for other similar wastes. The Respondent believed that based upon its' knowledge of the characteristics of the loose pigment residue, the waste pigment residue was likely to have similar characteristics. The Respondent believed that the waste pigment residue contained similar pigment contaminated wastes to the waste dust collected and analyzed in the dust collection system. The individual pigments used by the Respondent were mixed with other components as part of the manufacturing process and were not generated individually in their pure form as wastes. The use of Medium Yellow Pigment, for example, was not generated in pure form as a waste. The waste generated was a mixture that contained Medium Yellow Pigment. Further, the Respondent no longer uses this product.

13. The Respondent denies that paragraph 13 is correct. The Respondent submitted a notice of Hazardous Waste Activity as a "very small

quantity generator of hazardous waste,” not a “very small quantity **handler** of hazardous waste.” The c. 21C regulations refer to a “generator of hazardous waste” and a “handler of universal waste.”

14. The Respondent denies the statement in paragraph 14 is correct. The Respondent has been a “very small quantity generator of hazardous waste,” not a “small quantity **handler** of hazardous waste.” The Respondent has been a small quantity handler of **universal waste**.

15. The Respondent admits in part and denies in part that the statement in paragraph 15 is correct. The Respondent is a “small quantity handler of universal waste”, not a “**very** small quantity handler of universal waste.”

16. The Respondent admits the statement in paragraph 16 is correct.

17. The Respondent admits the statement in paragraph 17 is correct.

18. The Respondent neither admits nor denies paragraph 18, as the Respondent cannot verify what the EPA inspectors evaluated.

19. The Respondent admits the statement in paragraph 19 is correct.

20. The Respondent admits the statement in paragraph 20 is correct.

VIOLATIONS

COUNT 1

21. The Respondent incorporates by reference paragraphs 1-20, above.

22. The Respondent admits that the statement in paragraph 22 is a conclusion of law for which no response is required.

23. The Respondent neither admits nor denies paragraph 23, as the Respondent cannot verify what the EPA inspectors observed.

24. The Respondent neither admits nor denies paragraph 24, as the Respondent cannot verify what the EPA inspectors observed.

25. The Respondent admits that paragraph 25 is correct. The Respondent believed that the waste pigment residue contained similar pigment contaminated wastes to the waste dust collected and analyzed in the dust collection system. The individual pigments used by the Respondent were mixed with other components as part of the manufacturing process and were not generated individually in their pure form as wastes.

26. The Respondent denies the statement in paragraph 26 is correct. The Respondent recalls stating that it had informed the laundry service that the residues on uniforms and other cleaning materials may contain "heavy metals," but did not state that they may contain "hazardous waste". EPA's Information Request on this issue used the term "hazardous substances", to which the Respondent answered: "...soiled PPE, uniforms, jumpsuits, and rags are nonhazardous because they potentially contain the same dust that is collected in the facility's dust collection system. Since the dust has been characterized as nonhazardous based on sampling and analyses, all of the soiled items have been characterized as nonhazardous as well." [See Respondent's answer to Information Request #5.]

27. The Respondent admits that paragraph 27 is correct, although the Respondent cannot verify what the EPA inspectors learned.

28. The Respondent admits that the statement in paragraph 28 is a conclusion of law for which no response is required.

29. The Respondent admits the statement in paragraph 29 is correct. However, since the Respondent never generated Medium Yellow Pigment in its pure form as a waste, it would not have been required to conduct a waste characterization for waste Medium Yellow Pigment alone.

30. The Respondent admits in part and denies in part that the statement in paragraph 30 is correct. Pursuant to 310 CMR 30.302(3)(b), the Respondent applied its "knowledge of the hazardous characteristics of the waste in light of the materials or the process used" to characterize its waste pigment residue based on analytical results for other similar waste pigments collected in the facility's dust collection system.

31. The Respondent admits in part and denies in part that the statement in paragraph 31 is correct. Pursuant to 310 CMR 30.302(3)(b), the Respondent applied its "knowledge of the hazardous characteristics of the waste in light of the materials or the process used." The Respondent generated loose pigment residue which contained lead and/or other metals, which it characterized as non-hazardous based on analytical information for other similar wastes. The Respondent believed that based upon its' knowledge of the characteristics of the loose pigment residue, the waste pigment residue was likely to have similar characteristics. The Respondent believed that the waste pigment residue

contained similar pigment contaminated wastes to the waste dust collected and analyzed in the dust collection system, and based its characterization on this.

COUNT II

FAILURE TO PROPERLY MANAGE UNIVERSAL WASTE IN A WAY THAT PREVENTS RELEASES

32. The Respondent incorporates by reference paragraphs 1-31, above.

33. The statements in paragraph 33 are conclusions of law for which no response is required.

34. The Respondent neither admits nor denies the statements in paragraph 34, as the Respondent cannot verify what the EPA inspectors observed. However, the Respondent admits that eight cartons containing spent fluorescent lamps were waiting to be shipped off-site for disposal. The Respondent states that prior to the time of EPA's inspection, the Respondent had requested quotes from two vendors (Veolia Technical Solutions and Waste Management) for packaging, removal, and disposal of the spent lamps. The Respondent was waiting for responses at the time of EPA's inspection. Invoices dated October 31, 2009 for disposal of the lamps were included with the Respondent's December response to the Request for Information ("RI"). The Respondent states that none of the lamps were put into the solid waste stream. Further, when the lamps were prepared for shipment offsite, only one broken

lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year.

35. The Respondent admits the statements in paragraph 35 were correct at the time of EPA's inspection in September 2009. The Respondent has since implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.* Used lamps are now stored in boxes designed for this purpose, marked with the date of accumulation, and managed in compliance with the universal waste regulations. At the time of EPA's inspection in September 2009, the Respondent had just completed a facility-wide re-lamping project as part of an energy-saving effort. As a result, the quantity of universal waste lamps present onsite during the EPA inspection was significantly larger than the typical quantity. The fluorescent lamps were waiting to be shipped off-site for disposal. Prior to the time of EPA's inspection, the Respondent had requested quotes from two vendors (Veolia Technical Solutions and Waste Management) for packaging, removal, and disposal of the spent lamps, and was waiting for responses at the time of EPA's inspection. Invoices dated October 31, 2009 for disposal of the lamps were included with the Respondent's December response to the RI. The Respondent states that none of the lamps were put into the solid waste stream. Further, when the lamps were prepared for shipment offsite, only one broken lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year. The Respondent has since

implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.*

COUNT III

FAILURE TO MARK STORED UNIVERSAL WASTE WITH THE DATE OF ACCUMULATION

36. The Respondent incorporates by reference paragraphs 1-35, above.

37. The statements in paragraph 37 are conclusions of law for which no response is required.

38. The Respondent neither admits nor denies paragraph 38, as the Respondent cannot verify what the EPA inspectors observed.

39. The Respondent admits the statements in paragraph 39 are correct. At the time of EPA's inspection in September 2009, the Respondent had just completed a facility-wide re-lamping project as part of an energy-saving effort. As a result, the quantity of universal waste lamps present onsite during the EPA inspection was significantly larger than the typical quantity. The fluorescent lamps were waiting to be shipped off-site for disposal. Prior to the time of EPA's inspection, the Respondent had requested quotes from two vendors (Veolia Technical Solutions and Waste Management) for packaging, removal, and disposal of the spent lamps, and was waiting for responses at the time of EPA's inspection. Invoices dated October 31, 2009 for disposal of the lamps were included with the Respondent's December response to the RI. The Respondent states that none of the lamps were put into the solid waste stream.

Further, when the lamps were prepared for shipment offsite, only one broken lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year. The Respondent has since implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.* Used lamps are now stored in boxes designed for this purpose, marked with the date of accumulation, and managed in compliance with the universal waste regulations.

VI. ORDER

40. The Respondent will comply with the requirements in paragraph 40, sections (A), (B), (C), and (D).

40.A. The Respondent has conducted sampling and analysis of the following wastes to support their waste determinations and determine their compliance with RCRA:

1. Waste floor-sweepings generated prior to the time lead-bearing pigments were eliminated from the process. This waste consisted of potential lead-bearing floor sweepings that were segregated from other floor sweepings, i.e., this waste was generated when lead-bearing pigments were being used, and was segregated from other floor sweepings pursuant to EPA's recommendations to the Respondent's personnel during the September 2009 inspection. A sample of this waste was analyzed for TCLP metals and determined to be nonhazardous.

2. Waste generated from cleaning process blenders prior to the time lead-bearing pigments were eliminated from the process, including pigment residue that potentially contained lead. Blender cleaning wastes that potentially contained lead were segregated from other blender cleaning wastes pursuant to EPA's recommendations to the Respondent's personnel during the September 2009 inspection. A sample of this waste was analyzed for TCLP metals and determined to be hazardous, due to the presence of lead, found at a concentration of 8.9 mg/L. This sample represented a more concentrated lead bearing pigment waste because it was generated in September 2009, which was **after** the Respondent began segregating lead-bearing waste from other pigment waste generated. Upon determination of the characteristics of this waste, the Respondent has made arrangements for off-site disposal by a licensed hazardous waste treatment, storage, and disposal facility. In addition, the Respondent is managing the identified waste residues in compliance with applicable hazardous waste handling requirements. The amount of this waste generated and accumulated by the Respondent is within the quantity limitations for very small quantity generators defined in 310 C.M.R. 30.353(1).

3. Waste pigment residue including floor sweepings and blender cleaning wastes that were generated after the facility eliminated its use of lead-bearing pigments. A sample of this waste was analyzed for TCLP metals and determined to be nonhazardous. The Respondent intends to implement additional sampling as appropriate to continue to verify and improve documentation of its waste characterizations. The Respondent has already eliminated the use of all lead-bearing pigments, including Medium Yellow Pigment. The later was used only as a mixture component during the manufacturing process; therefore, wastes generated from the manufacturing process never consisted of pure Medium Yellow Pigment.

40.B. At the time of EPA's inspection in September 2009, the Respondent had just completed a facility-wide re-lamping project as part of an energy-saving effort. As a result, the quantity of universal waste lamps present onsite during the EPA inspection was significantly larger than the typical quantity. The Respondent has implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.* Used lamps are now stored in boxes designed for this purpose, marked with the date of accumulation, and managed in compliance with the universal waste regulations.

40.C At the time of EPA's inspection in September 2009, the Respondent had just completed a facility-wide re-lamping project as part of an energy-saving effort. As a result, the quantity of universal waste lamps present

onsite during the EPA inspection was significantly larger than the typical quantity. The fluorescent lamps were waiting to be shipped off-site for disposal. Prior to the time of EPA's inspection, the Respondent had requested quotes from two vendors (Veolia Technical Solutions and Waste Management) for packaging, removal, and disposal of the spent lamps, and was waiting for responses at the time of EPA's inspection. Invoices dated October 31, 2009 for disposal of the lamps were included with the Respondent's December response to the RI. The Respondent states that none of the lamps was put into the solid waste stream. Further, when the lamps were prepared for shipment offsite, only one broken lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year. The Respondent has since implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.* Used lamps are now stored in boxes designed for this purpose, marked with the date of accumulation, and managed in compliance with the universal waste regulations.

40.D. The Respondent will submit to EPA written confirmation of its compliance or noncompliance on the prescribed or extended date.

41. The Respondent admits that the statements in paragraph 41 are conclusions of law for which no response is required.

42. The Respondent admits that the statements in paragraph 42 are conclusions of law for which no response is required.

personnel that the waste pigment residues were nonhazardous was based on analyses and characterization of similar waste from the dust collection system, and the knowledge that the waste pigment residue was likely to have similar characteristics. The Respondent believed that the comparison of the waste pigment residues to the waste dust collected in the dust collection system was reasonable. Although certain pigments used by the Respondent in the past contained higher concentrations of lead, these pigments were mixed with other components as part of the manufacturing process and were not generated separately from the overall mixture. For example, the Medium Yellow Pigment product cited above was not generated in pure form as a waste. Rather, the waste generated was a mixture that sometimes contained Medium Yellow Pigment. Due to the variety of mixture components, the comparison of the waste pigment residues to the dust collected in the dust collection system was made because the wastes were expected to have a similar makeup. The proposed penalty should be reduced to a level imposed under Count III.

- (2) Count II: The Respondent contests the proposed penalty for the alleged failure to properly manage universal waste. At the time of EPA's inspection in September 2009, the Respondent had just completed a facility-wide re-lamping project as part of an energy-saving effort. As a result, the quantity of universal waste lamps present onsite during the EPA inspection was significantly larger than

the typical quantity. The fluorescent lamps were waiting to be shipped off-site for disposal. Prior to the time of EPA's inspection, the Respondent had requested quotes from two vendors (Veolia Technical Solutions and Waste Management) for packaging, removal, and disposal of the spent lamps, and was waiting for responses at the time of EPA's inspection. Invoices dated October 31, 2009 for disposal of the lamps were included with the Respondent's December response to the RI. The Respondent states that none of the lamps were put into the solid waste stream. Further, when the lamps were prepared for shipment offsite, only one broken lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year. The Respondent has since implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.* Used lamps are now stored in boxes designed for this purpose, marked with the date of accumulation, and managed in compliance with the universal waste regulations. The proposed penalty should be reduced to a level imposed under Count III.

- (3) Count III: The Respondent contests the proposed penalty for the alleged failure to mark stored universal waste with the date of accumulation, since it was in the process of arranging for disposal of the waste in accordance with regulatory requirements and the universal waste had been stored onsite for less than one year.

44. The statements in paragraph 44 are conclusions of law for which no response is required.

VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

The Respondent hereby files a written Answer to the Complaint within the 30-day time period as stated in 40 C.F.R. 22.15, as stated in Section VIII of the Complaint, and requests a hearing. The Respondent has provided answers herein to admit, deny, or explain each factual allegation in the Complaint.

1. The Respondent hereby states the following circumstances and arguments alleged to constitute the grounds of defense:

a. The Respondent has eliminated lead-bearing pigments. Prior to EPA's September 2009 inspection, waste characterizations were made by the Respondent based on their knowledge of the hazardous characteristics of the waste used. The Respondent has complied with the requirement in paragraph 40(A) by conducting sampling and analysis of waste pigment residues and managing the wastes in compliance with applicable regulations.

b. The Respondent has complied with the requirement in paragraph 40(B) by properly disposing of the used mercury lamps that were present during EPA's onsite inspection in September 2009, and has implemented a universal waste management

program in accordance with 310 CMR 30.1000 *et seq.* including the proper storage of used lamps.

c. The Respondent has complied with the requirement in paragraph 40(C) prior to the time it submitted its response to EPA's RI and prior to the time the Respondent filed its response to the RI on December 23, 2009.

2.. The Respondent hereby states the following facts it intends to place at issue:

a) The Respondent's activities signifying compliance with regulatory requirements with regard to waste streams, characterization of potentially hazardous waste, and handling of universal waste were made in good faith and based on the knowledge and information available to them at the time and based on certain assumptions described herein.

b) The Respondent's immediate and ongoing cooperative responses to EPA's request for information and compliance activities pursuant thereto.

c) The Respondent never placed any suspected waste materials in the solid waste stream without previously "applying knowledge of the hazardous

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Pursuant to the requirements of 40 C.F.R. 22.15, attached please find Hudson's answer (the "Answer") to the allegations in the Complaint.

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L & A Molding Corporation)	EPA Docket Number
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Respondent)	RESPONDENT's ANSWER
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I. STATEMENT OF AUTHORITY

The Respondent admits that the statements in Section I are conclusions of law for which no response is required.

II. NATURE OF ACTION

1. The Respondent admits that the statements in paragraph 1 are conclusions of law for which no response is required.

2. The Respondent admits that the statements in paragraph 2 are conclusions of law for which no response is required.

III. RCRA STATUTORY AND REGULATORY FRAMEWORK

3. The statements in paragraph 3 are conclusions of law for which no response is required.

4. The statements in paragraph 4 are conclusions of law for which no response is required.

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quantity generator of hazardous waste,” not a “very small quantity **handler** of hazardous waste.” The c. 21C regulations refer to a “generator of hazardous waste” and a “handler of universal waste.”

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18. The Respondent neither admits nor denies paragraph 18, as the Respondent cannot verify what the EPA inspectors evaluated.

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VIOLATIONS

COUNT 1

21. The Respondent incorporates by reference paragraphs 1-20, above.

22. The Respondent admits that the statement in paragraph 22 is a conclusion of law for which no response is required.

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contained similar pigment contaminated wastes to the waste dust collected and analyzed in the dust collection system, and based its characterization on this.

COUNT II

FAILURE TO PROPERLY MANAGE UNIVERSAL WASTE IN A WAY THAT PREVENTS RELEASES

32. The Respondent incorporates by reference paragraphs 1-31, above.

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lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year.

35. The Respondent admits the statements in paragraph 35 were correct at the time of EPA's inspection in September 2009. The Respondent has since implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.* Used lamps are now stored in boxes designed for this purpose, marked with the date of accumulation, and managed in compliance with the universal waste regulations. At the time of EPA's inspection in September 2009, the Respondent had just completed a facility-wide re-lamping project as part of an energy-saving effort. As a result, the quantity of universal waste lamps present onsite during the EPA inspection was significantly larger than the typical quantity. The fluorescent lamps were waiting to be shipped off-site for disposal. Prior to the time of EPA's inspection, the Respondent had requested quotes from two vendors (Veolia Technical Solutions and Waste Management) for packaging, removal, and disposal of the spent lamps, and was waiting for responses at the time of EPA's inspection. Invoices dated October 31, 2009 for disposal of the lamps were included with the Respondent's December response to the RI. The Respondent states that none of the lamps were put into the solid waste stream. Further, when the lamps were prepared for shipment offsite, only one broken lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year. The Respondent has since

implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.*

COUNT III

FAILURE TO MARK STORED UNIVERSAL WASTE WITH THE DATE OF ACCUMULATION

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37. The statements in paragraph 37 are conclusions of law for which no response is required.

38. The Respondent neither admits nor denies paragraph 38, as the Respondent cannot verify what the EPA inspectors observed.

39. The Respondent admits the statements in paragraph 39 are correct. At the time of EPA's inspection in September 2009, the Respondent had just completed a facility-wide re-lamping project as part of an energy-saving effort. As a result, the quantity of universal waste lamps present onsite during the EPA inspection was significantly larger than the typical quantity. The fluorescent lamps were waiting to be shipped off-site for disposal. Prior to the time of EPA's inspection, the Respondent had requested quotes from two vendors (Veolia Technical Solutions and Waste Management) for packaging, removal, and disposal of the spent lamps, and was waiting for responses at the time of EPA's inspection. Invoices dated October 31, 2009 for disposal of the lamps were included with the Respondent's December response to the RI. The Respondent states that none of the lamps were put into the solid waste stream.

Further, when the lamps were prepared for shipment offsite, only one broken lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year. The Respondent has since implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.* Used lamps are now stored in boxes designed for this purpose, marked with the date of accumulation, and managed in compliance with the universal waste regulations.

VI. ORDER

40. The Respondent will comply with the requirements in paragraph 40, sections (A), (B), (C), and (D).

40.A. The Respondent has conducted sampling and analysis of the following wastes to support their waste determinations and determine their compliance with RCRA:

1. Waste floor-sweepings generated prior to the time lead-bearing pigments were eliminated from the process. This waste consisted of potential lead-bearing floor sweepings that were segregated from other floor sweepings, i.e., this waste was generated when lead-bearing pigments were being used, and was segregated from other floor sweepings pursuant to EPA's recommendations to the Respondent's personnel during the September 2009 inspection. A sample of this waste was analyzed for TCLP metals and determined to be nonhazardous.

2. Waste generated from cleaning process blenders prior to the time lead-bearing pigments were eliminated from the process, including pigment residue that potentially contained lead. Blender cleaning wastes that potentially contained lead were segregated from other blender cleaning wastes pursuant to EPA's recommendations to the Respondent's personnel during the September 2009 inspection. A sample of this waste was analyzed for TCLP metals and determined to be hazardous, due to the presence of lead, found at a concentration of 8.9 mg/L. This sample represented a more concentrated lead bearing pigment waste because it was generated in September 2009, which was **after** the Respondent began segregating lead-bearing waste from other pigment waste generated. Upon determination of the characteristics of this waste, the Respondent has made arrangements for off-site disposal by a licensed hazardous waste treatment, storage, and disposal facility. In addition, the Respondent is managing the identified waste residues in compliance with applicable hazardous waste handling requirements. The amount of this waste generated and accumulated by the Respondent is within the quantity limitations for very small quantity generators defined in 310 C.M.R. 30.353(1).

3. Waste pigment residue including floor sweepings and blender cleaning wastes that were generated after the facility eliminated its use of lead-bearing pigments. A sample of this waste was analyzed for TCLP metals and determined to be nonhazardous. The Respondent intends to implement additional sampling as appropriate to continue to verify and improve documentation of its waste characterizations. The Respondent has already eliminated the use of all lead-bearing pigments, including Medium Yellow Pigment. The later was used only as a mixture component during the manufacturing process; therefore, wastes generated from the manufacturing process never consisted of pure Medium Yellow Pigment.

40.B. At the time of EPA's inspection in September 2009, the Respondent had just completed a facility-wide re-lamping project as part of an energy-saving effort. As a result, the quantity of universal waste lamps present onsite during the EPA inspection was significantly larger than the typical quantity. The Respondent has implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.* Used lamps are now stored in boxes designed for this purpose, marked with the date of accumulation, and managed in compliance with the universal waste regulations.

40.C At the time of EPA's inspection in September 2009, the Respondent had just completed a facility-wide re-lamping project as part of an energy-saving effort. As a result, the quantity of universal waste lamps present

onsite during the EPA inspection was significantly larger than the typical quantity. The fluorescent lamps were waiting to be shipped off-site for disposal. Prior to the time of EPA's inspection, the Respondent had requested quotes from two vendors (Veolia Technical Solutions and Waste Management) for packaging, removal, and disposal of the spent lamps, and was waiting for responses at the time of EPA's inspection. Invoices dated October 31, 2009 for disposal of the lamps were included with the Respondent's December response to the RI. The Respondent states that none of the lamps was put into the solid waste stream. Further, when the lamps were prepared for shipment offsite, only one broken lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year. The Respondent has since implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.* Used lamps are now stored in boxes designed for this purpose, marked with the date of accumulation, and managed in compliance with the universal waste regulations.

40.D. The Respondent will submit to EPA written confirmation of its compliance or noncompliance on the prescribed or extended date.

41. The Respondent admits that the statements in paragraph 41 are conclusions of law for which no response is required.

42. The Respondent admits that the statements in paragraph 42 are conclusions of law for which no response is required.

DEFENSES

VII. ASSESSMENT OF PENALTY

43. The Respondent denies that the proposed penalties are appropriate for the violations alleged. The Respondent took immediate steps to comply with the items in the RI. The Respondent has ceased the use of the lead-bearing pigments identified in EPA's Information Request, has properly disposed of the previously identified mercury-lamps, implemented a universal waste management program, and changed its lighting system so that it now uses more energy efficient lamps. Therefore, the amount of the proposed civil penalties should be reduced. The Respondent did not receive any economic benefit from the alleged violations, rather it expended resources to comply with the items in the RI, including the hiring of a technical consultant.

43. [second] Given the Respondent's response and the level of harm posed by the alleged violations, Respondent requests a reduction in the proposed penalties for Counts I and II. The Respondent denies that the EPA has fairly assessed the proposed penalties.

(1) Count I: The Respondent contests the proposed penalty for the alleged failure to conduct adequate hazardous waste determinations. The Respondent eliminated the use of all lead-bearing pigments, including Medium Yellow Pigment. The later was used only as a mixture component during the manufacturing process; therefore, wastes generated from the manufacturing process never consisted of pure Medium Yellow Pigment. The determination by the Respondent's

personnel that the waste pigment residues were nonhazardous was based on analyses and characterization of similar waste from the dust collection system, and the knowledge that the waste pigment residue was likely to have similar characteristics. The Respondent believed that the comparison of the waste pigment residues to the waste dust collected in the dust collection system was reasonable. Although certain pigments used by the Respondent in the past contained higher concentrations of lead, these pigments were mixed with other components as part of the manufacturing process and were not generated separately from the overall mixture. For example, the Medium Yellow Pigment product cited above was not generated in pure form as a waste. Rather, the waste generated was a mixture that sometimes contained Medium Yellow Pigment. Due to the variety of mixture components, the comparison of the waste pigment residues to the dust collected in the dust collection system was made because the wastes were expected to have a similar makeup. The proposed penalty should be reduced to a level imposed under Count III.

- (2) Count II: The Respondent contests the proposed penalty for the alleged failure to properly manage universal waste. At the time of EPA's inspection in September 2009, the Respondent had just completed a facility-wide re-lamping project as part of an energy-saving effort. As a result, the quantity of universal waste lamps present onsite during the EPA inspection was significantly larger than

the typical quantity. The fluorescent lamps were waiting to be shipped off-site for disposal. Prior to the time of EPA's inspection, the Respondent had requested quotes from two vendors (Veolia Technical Solutions and Waste Management) for packaging, removal, and disposal of the spent lamps, and was waiting for responses at the time of EPA's inspection. Invoices dated October 31, 2009 for disposal of the lamps were included with the Respondent's December response to the RI. The Respondent states that none of the lamps were put into the solid waste stream. Further, when the lamps were prepared for shipment offsite, only one broken lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year. The Respondent has since implemented a universal waste management program in accordance with 310 C.M.R. 30.1000 *et seq.* Used lamps are now stored in boxes designed for this purpose, marked with the date of accumulation, and managed in compliance with the universal waste regulations. The proposed penalty should be reduced to a level imposed under Count III.

- (3) Count III: The Respondent contests the proposed penalty for the alleged failure to mark stored universal waste with the date of accumulation, since it was in the process of arranging for disposal of the waste in accordance with regulatory requirements and the universal waste had been stored onsite for less than one year.

44. The statements in paragraph 44 are conclusions of law for which no response is required.

VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

The Respondent hereby files a written Answer to the Complaint within the 30-day time period as stated in 40 C.F.R. 22.15, as stated in Section VIII of the Complaint, and requests a hearing. The Respondent has provided answers herein to admit, deny, or explain each factual allegation in the Complaint.

1. The Respondent hereby states the following circumstances and arguments alleged to constitute the grounds of defense:

- a. The Respondent has eliminated lead-bearing pigments. Prior to EPA's September 2009 inspection, waste characterizations were made by the Respondent based on their knowledge of the hazardous characteristics of the waste used. The Respondent has complied with the requirement in paragraph 40(A) by conducting sampling and analysis of waste pigment residues and managing the wastes in compliance with applicable regulations.
- b. The Respondent has complied with the requirement in paragraph 40(B) by properly disposing of the used mercury lamps that were present during EPA's onsite inspection in September 2009, and has implemented a universal waste management

program in accordance with 310 CMR 30.1000 *et seq.* including the proper storage of used lamps.

c. The Respondent has complied with the requirement in paragraph 40(C) prior to the time it submitted its response to EPA's RI and prior to the time the Respondent filed its response to the RI on December 23, 2009.

2.. The Respondent hereby states the following facts it intends to place at issue:

a) The Respondent's activities signifying compliance with regulatory requirements with regard to waste streams, characterization of potentially hazardous waste, and handling of universal waste were made in good faith and based on the knowledge and information available to them at the time and based on certain assumptions described herein.

b) The Respondent's immediate and ongoing cooperative responses to EPA's request for information and compliance activities pursuant thereto.

c) The Respondent never placed any suspected waste materials in the solid waste stream without previously "applying knowledge of the hazardous

characteristics of the waste in light of the materials or the process used.” 310 CMR 30.302(3)(b).

d.) The Respondent did not profit from any alleged violations of the cited regulations, rather it has engaged technical and legal assistance to respond to EPA’s RI and Order; as well as complying with the regulations.

e.) Prior to the time of EPA’s inspection, the Respondent had implemented an energy-saving project throughout the facility which involved replacing all of the existing mercury-containing lamps, for which quotes had been requested from two vendors for packaging, removal, and disposal of the spent lamps. Invoices dated October 31, 2009 for disposal of the lamps were included with the Respondent’s December response to the RI. The Respondent states that none of the lamps were put into the solid waste stream. Further, when the lamps were prepared for shipment offsite, only one broken lamp was observed out of 688 lamps to be disposed (representing 0.14% of the total number of lamps). The used lamps had been onsite for less than one year.

- f.) No prior violations of RCRA or c.21C regulations.
- g.) As a first time violator it is unfair to propose assessing penalties at the levels in the Order.
- h.) The Respondent purchased a failing business in 2001 and now employs nearly 50 people, with growing employment opportunities.
- i.) The amount of lead pigments used by the Respondent in 2009 was only a small percentage of the total amount of raw materials used at the facility (approximately 2%). The Respondent eliminated its use of lead pigments completely on December 16, 2009.

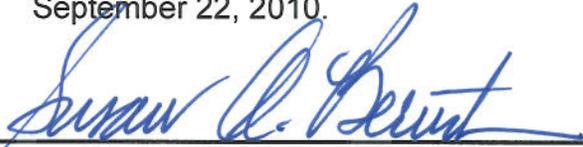
3.. The Respondent hereby requests a hearing, pursuant to the provisions of Section VIII of the Complaint.

IX. **DEFAULT ORDER**

The Respondent understands the consequences of failure to comply as stated in Section IX, regarding default order.

X. SETTLEMENT CONFERENCE

The Respondent, in response to Section X, communicated with the EPA Enforcement Attorney on September 7, 2010, indicated that the Respondent wishes to confer informally with EPA and provided a written response dated September 22, 2010.



Susan A. Bernstein
Attorney for the Respondent, Hudson Color Concentrates
Date: September 29, 2010