

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)

Lifestyle Footwear, Inc.,)

Respondent)

) Docket No. RCRA-02-2007-7115
)
)

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 11
2007 DEC 21 PM 12: 09
REGIONAL HEARING
CLERK

ORDER

This proceeding arises under the authority of Section 3008 of the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 U.S.C. § 6928. The purpose of this Order is to direct parties to exchange prehearing information in accordance with Rule 22.19 of 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 parties are directed to provide the following information:

By Complainant and Respondent:

1. Desired or required location of the hearing. *See* Rules 22.19(d) and 22.21(d).
2. A list of prospective witnesses, a brief summary of their anticipated testimony, and a copy of each document or exhibit to be proffered in evidence to the extent not covered by the specific requests below.

By Complainant:

1. Provide a copy of the Notification of Regulated Waste Activity Form dated on September 6, 2000, referred to in paragraph 11 of the complaint.
2. Provide a copy of Respondent's letter dated December 9, 2006, entitled Subsequent Notification and Amendments, as well as the attachment, RCRA Subtitle C Site Identification Form, referred to in paragraph 16 of the complaint.
3. Provide a copy of the report of inspection of Respondent's facility.
4. Provide a copy of the Notice of Violation ("NOV"), referred to in paragraph 30 of the complaint.
5. Provide a copy of the response to the NOV submitted by Respondent, referred to in paragraph 31 of the complaint.
6. Provide a copy of the letter EPA sent to Respondent on or about December 28, 2006, referred to in paragraph 32 of the complaint.

7. Provide a copy of the letter sent to EPA by Respondent on or about January 10, 2007, referred to in paragraph 33 of the complaint.
8. Provide a summary of any evidence supporting the allegations in paragraph 39 of the complaint that prior to at least March 20, 2006, Respondent generated at its facility at least the following waste materials:
 - a. Two almost full 5-gallon plastic containers holding solid waste mixed with rags impacted with paint related materials located at the Chemical/Raw Material Warehouse
 - b. One wood platform heavily impacted with discarded material/waste and black shoe ink located at the Backyard Area; and,
 - c. 1.5-gallon plastic container (almost half-full) holding an unknown waste located the Old Equipment Storage area.
9. Provide a summary of any evidence supporting the allegation in paragraph 40 of the complaint that subsequent to March 20, 2006, Respondent discarded or disposed of the above-listed waste material by placing it with the municipal trash.
10. Provide a summary of any evidence supporting the allegations in paragraph 41 of the complaint that prior to at least March 20, 2006, Respondent also generated at its facility at least the following hazardous waste materials:
 - a. Five cardboard boxes holding more than 40 spent fluorescent light bulbs; and,
 - b. One package of 12 spent fluorescent light bulbs.
11. Provide a summary of any evidence supporting the allegation in paragraph 42 of the complaint that, Respondent accumulated or stored at its facility the above-listed material before or in lieu of it being disposed of.
12. Provide a summary of any evidence supporting the allegation in paragraph 44 of the complaint that, as of at least March 20, 2006, Respondent had not determined if the materials listed above constituted hazardous wastes.
13. Provide a summary of any evidence, supporting the allegations in paragraph 49 of the complaint that, as of March 20, 2006, Respondent was storing hazardous waste in containers at its facility.
14. Provide a summary of any evidence, supporting the allegations in paragraph 53 of the complaint that, as of March 20, 2006, Respondent was storing hazardous waste in containers which were in a condition of extreme deterioration and neglect.
15. Provide a summary of any evidence, supporting the allegations in paragraph 54 of the complaint that Respondent had been storing containers of hazardous waste at the facility for more than 180 days prior to April 12, 2006.
16. Provide a summary of any evidence, supporting the allegations in paragraph 57 of the complaint that from March 20, 2006 until April 12, 2006, Respondent had certain containers of

hazardous waste which were being stored at the facility but were not labeled with the words, "hazardous waste."

17. Provide a summary of any evidence, supporting the allegations in paragraph 59 of the complaint that from March 20, 2006 until April 12, 2006, Respondent failed to have hazardous waste labels with an accumulation start date on containers of hazardous waste stored at the facility.

18. Provide a summary of any evidence, supporting the allegations in paragraph 62 of the complaint that from March 20, 2006 until April 12, 2006, Respondent was not conducting weekly inspections of the areas at the facility in which hazardous waste was being stored.

19. Provide a summary of any evidence, supporting the allegations in paragraph 63 of the complaint that from March 20, 2006 until April 12, 2006, Respondent failed to meet conditions necessary to accumulate hazardous waste without having obtained a permit or qualifying for interim status.

20. Provide a summary of any evidence, supporting the allegations in paragraph 70 of the complaint that from March 20, 2006 until April 12, 2006, Respondent was storing hazardous waste in open containers, when waste was neither being added to nor removed from the containers.

21. Provide a summary of any evidence, supporting the allegations in paragraph 75 of the complaint that from March 20, 2006 until April 12, 2006, Respondent had been storing hazardous waste in containers that were not in good condition or that were exhibiting leakage.

22. Provide a summary of any evidence, supporting the allegations in paragraph 81 of the complaint that from March 20, 2006 until April 12, 2006, Respondent was storing hazardous waste in the Backyard Area, with no roof and exposed to sun, rain and wind, with reactive wastes placed next to flammable solvent wastes, and other chemicals, including toxins.

23. Provide a summary of any evidence, supporting the allegations in paragraph 90 of the complaint that Respondent failed to ensure that all of its facility personnel responsible for hazardous waste management had received the required training within six months and/or annual reviews that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste management regulations.

24. Provide a summary of any evidence, supporting the allegations in paragraph 93 of the complaint that, at the time of the inspection, Respondent was storing used oil in a 55-gallon drum and had failed to label or mark the used oil drum with the words, "used oil."

25. Respond to Respondent's contention that it was a Conditionally Exempt Small Quantity Generator, and as such, not subject to accumulation, time and storage requirements of federal regulations.

26. Describe the effect, if any, of Respondent being a Conditionally Exempt Small Quantity Generator would have on this proceeding.

27. Provide a summary of any expert testimony.

28. Provide a copy of the civil penalty computation worksheets and explain in detail the calculation of the proposed penalty.

By Respondent:

1. If not provided in responses to specific items below, summarize any facts supporting denial of the violations alleged in the complaint.¹

2. If Respondent is contending that it was a Conditionally Exempt Small Quantity Generator, and as such, not subject to accumulation, time and storage requirements of federal regulations, provide a summary of evidence to support this claim.

3. Respondent having admitted the allegations of paragraph 39 of the complaint that Respondent generated the waste material identified, provide a summary of evidence that the waste material did not constitute hazardous waste.

4. If Respondent is contending that not all the light bulbs identified in paragraph 41 of the complaint were spent, provide a summary of evidence to support this claim.

5. If Respondent is contending that the facility at all relevant times disposed of all items identified in paragraph 39 as hazardous waste, provide a summary of evidence to support this claim.

6. If Respondent is contending that the leaking and deteriorated containers of hazardous waste identified in paragraph 53 of the complaint did not contain hazardous waste, provide a summary of evidence to support this claim.

7. If Respondent is contending that containers of waste not labeled with the words "hazardous waste", identified in paragraph 57 of the complaint did not contain hazardous waste, provide a summary of evidence to support this claim.

8. If Respondent is contending that containers of waste not labeled with the accumulation start date identified in paragraph 59 of the complaint did not contain hazardous waste, provide a summary of evidence to support this claim.

9. If Respondent is contending that it was conducting weekly inspections the hazardous waste storage areas from March 20, 2006 until April 12, 2006, as identified in paragraph 62 of the complaint, provide a summary of evidence to support this claim.

¹ The Court has received the documents provided with Respondent's Answer. To the extent that the following requests are unanswered by Respondent's prior submission, please submit the information requested.

10. If Respondent is contending that it was not storing hazardous waste in open containers at various locations at the time of the inspection, as identified in paragraph 69 of the complaint, provide a summary of evidence to support this claim.

11. If Respondent is contending that it was not storing hazardous waste in containers that were not in good condition or that were exhibiting leakage, at various locations at the time of the inspection, as identified in paragraph 75 of the complaint, provide a summary of evidence to support this claim.

12. If Respondent is contending that it was not storing hazardous waste in the Backyard Area, which has no roof and is exposed to the sun, rain and wind, at the time of the inspection, as identified in paragraph 81 of the complaint, provide a summary of evidence to support this claim.

13. If Respondent is contending that it was not storing hazardous waste in the Backyard Area, with reactive wastes placed next to flammable solvent wastes, and other chemicals, including toxins, at the time of the inspection, as identified in paragraph 81 of the complaint, provide a summary of evidence to support this claim.

14. If Respondent is contending that all of its facility personnel responsible for hazardous waste management had received the required training and/or annual reviews at the time of inspection, as identified in paragraph 86 of the complaint, provide a summary of evidence to support this claim.

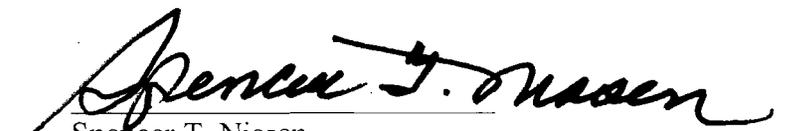
15. Submit a memorandum supporting the arguments that Complainant's proposed penalty is excessive and not in proportion to the violations incurred by Respondent.

16. Submit a memorandum supporting the arguments that Complainant's action is time barred, and barred by the affirmative defenses of waiver and consent.

17. If Respondent is contending that the proposed penalty exceeds its ability to pay, provide financial statements, copies of income tax returns or other data to support such contention.

Responses to this Order should be provided to the Regional Hearing Clerk, the other party, and to the undersigned on or before February 4, 2008.

Dated this 19th day of December, 2007.


Spencer T. Nissen
Administrative Law Judge

* In accordance with Rule 22.5(c)(4), the parties are directed to promptly notify the Regional Hearing Clerk, all other parties, and the ALJ of any change in address and/or telephone number.

** The parties are informed that the use of E-Mail to communicate with this office is considered inappropriate.

In the matter of *Lifestyle Footwear, Inc.*, Respondent.
Docket No. RCRA-02-2007-7115

CERTIFICATE OF SERVICE

I certify that the foregoing Prehearing Order, dated December 19, 2007, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Karen Maples
Regional Hearing Clerk
U.S. EPA / Region II
290 Broadway, 16th Floor
New York, NY 10007-1866

One Copy by Facsimile and Pouch Mail to:

Stuart Keith, Esq.
Assistant Regional Counsel
U.S. EPA / Region II
290 Broadway 16th Floor
New York, NY 10007-1866
Fx: 212.637.3199 or 3115

One Copy by Facsimile and Regular Mail to:

Cristina S. Belaval Burger, Esq.
Jorge J. Garcia Cruz, Esq.
Martinez, Odell & Calabria
P.O. Box 190908
San Juan, PR 00919-0998
Fx: 787.764,5664

Dated: December 19, 2007
Washington, D.C.