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6
7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 IN THE MATTER OF) U.S. EPA Docket No.
11) RCRA 09-2008-0001
12 CONCORDE GARMENT)
13 MANUFACTURING CORPORATION)

14 CONCORDE GARMENT MANUFACTURING
15 CORPORATION'S ANSWER TO DETERMINATION
16 OF VIOLATION AND COMPLIANCE ORDER;
REQUEST FOR ADMINISTRATIVE HEARING

17 Concorde Garment Manufacturing Corporation ("Concorde"), through undersigned counsel,
18 hereby responds to the Determination of Violation and Compliance Order (hereinafter
19 "Determination") which was served on November 5, 2007, by certified mail.

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21 I.

22 Response to Allegations in Determination of Violation

23
24 1. Without admitting any legal liability, the allegations contained in ¶¶ 1, 2 and 3 of the
25 Determination are admitted.¹

26
27 ¹
Concorde permanently ceased its apparel manufacturing operations in Saipan in February, 2007.
It announced its intention to close the facility in December, 2006.

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- 1 2. Without admitting any legal liability, the allegations contained in ¶ 4 of the Determination
2 are admitted.
- 3
4 3. Concorde denies the allegations contained in §§ 5, 6, 7 and 8 of the Determination.
- 5 4. Concorde denies the allegations contained in ¶ 9 of the Determination.
- 6
7 5. Without admitting any legal liability, the allegations contained in ¶¶ 10, 11 and 12 of the
8 Determination are admitted. The Notice of Violation was dated February 9, 2005, almost one year
9 after the inspection date.
- 10 6. The allegations contained in ¶ 13 of the Determination are denied.
- 11
12 7. The allegations contained in ¶¶ 14 and 15 of the determination are admitted.
- 13 8. ¶ 16 of the Determination does not require any additional response.
- 14
15 9. Without admitting any legal liability, the allegations contained in ¶ 17 of the Determination
16 are admitted.
- 17 10. Concorde denies the allegations contained in ¶ 18 of the Determination.
- 18
19 11. With respect to the allegations contained in ¶¶ 19 and 20, the drum observed by the EPA
20 inspector was a process waste storage container used to hold recently collected water and water
21 based paint residue generated by the print screen printing process. A hazardous waste determination
22 could have been conducted when the drum was full and ready for disposal. The remaining
23 allegations contained in these paragraphs are denied.
- 24 12. Concorde denies the allegations contained in ¶¶ 21, 22, 23 and 24 of the Determination are
25 denied upon information and belief. The EPA Inspector failed to take samples of the contents of
26 the 55-gallon drum, plastic bags or buckets.
- 27

1 13. The allegations contained in ¶ 25 of the Determination are denied except that it is admitted
2 that Concorde provided EPA with copies of the Material Safety Data Sheets.

3 14. The allegations contained in ¶ 26 of the Determination are admitted.
4

5 15. The allegations contained in ¶ 27 of the Determination are denied.

6 16. ¶ 28 of the Determination does not require any additional response.
7

8 17. The allegations contained in ¶ 29 of the Determination are admitted.

9 18. The allegations contained in ¶ 30 of the Determination are denied.
10

11 19. Without admitting any legal liability, the allegations contained in ¶ 31 of the Determination
12 are admitted.

13 20. Concorde denies the allegations contained in ¶¶ 32 and 33 of the Determination. The EPA
14 Inspector failed to take samples of the rags or the containers to determine whether they contained
15 hazardous waste.
16

17 21. ¶ 34 of the Determination does not require any additional response.

18 22. Without admitting any legal liability, Concorde admits the allegations contained in ¶ 35 of
19 the Determination.
20

21 23. Concorde denies the allegations contained in ¶¶ 36 and 37 of the Determination.² Testing
22 results subsequently conducted by an environmental engineering firm hired by Concorde revealed
23

24 ²
25 Concorde may also rely upon Proposed Rules Hazardous Waste Management System; Identification
26 and Listing of Hazardous Waste; Conditional Exclusions from Hazardous Waste and Solid Waste
27 for Solvent Contaminated Industrial Wipes. **Federal Register**/Vol. 68, No. 224 (November 20,
2003).

1 that the rags used in the screen printing process were nonhazardous. The EPA Inspector failed to
2 take samples or otherwise test the rags to ascertain whether they contained hazardous waste as
3 alleged in the Determination.

4 24. Concorde lacks sufficient information to admit or deny the allegations contained in ¶ 38 of
5 the Determination with respect to the Commonwealth Port Authority and, on that basis, these
6 allegations are denied.

7
8 25. Concorde denies the allegations contained in ¶ 39 of the Determination.

9 26. ¶ 40 of the Determination does not require any additional response.

10
11 27. Without admitting any legal liability, Concorde admits the allegations contained in ¶ 41 of
12 the Determination.

13 28. Concorde denies the allegations contained in ¶¶ 42, 43 and 44 of the Determination. The
14 EPA Inspector failed to take samples or otherwise test the waste which he observed during the
15 inspection on or about March 5, 2004.

16
17 29. ¶ 45 of the Determination does not require any additional response.

18 30. Concorde denies the allegations contained in ¶¶ 46, 47, 48 and 49 of the Determination.

19
20 31. ¶ 50 of the Determination does not require any additional response.

21 32. Without admitting any legal liability, Concorde admits the allegations contained in ¶ 51 of
22 the Determination.

23
24 33. With respect to ¶ 52 of the Determination, Concorde admits that it did not have a permit or
25 grant of interim status to store hazardous waste under 40 C.F.R. § 270.1. However, Concorde
26 denies that the waste observed by the EPA and which forms the basis of this Determination was
27

- 1 hazardous. Concorde further denies that it was required to acquire a permit or grant of interim status.
- 2
- 3 34. Concorde denies the allegations contained in ¶ 53 of the Determination.
- 4 35. Without admitting any legal liability, Concorde admits the allegations contained in ¶ 54 of
- 5 the Determination.
- 6 36. Concorde denies the allegations contained ¶ 55 of the Determination.
- 7
- 8 37. Without admitting any legal liability, Concorde admits the allegations contained in ¶ 56 of
- 9 the Determination.
- 10 38. Concorde denies the allegations contained in ¶¶ 57, 58 and 59 of the Determination are
- 11 denied.
- 12
- 13 39. Without admitting any legal liability, the allegations contained in ¶ 60 of the Determination
- 14 are admitted.
- 15
- 16 40. Concorde denies the allegations contained in ¶¶ 61, 62 and 63 of the Determination.
- 17 41. With respect to ¶ 64 of the Determination, without admitting any legal liability, Concorde
- 18 admits that the cited laws authorize the Administrator to assess civil penalties. The remaining
- 19 allegations contained under the Heading Civil Penalty are denied.
- 20
- 21 42. ¶¶ 65, 66, 67, 68 and 69 of the Determination contains information regarding the filing and
- 22 service of an Answer and request for public hearing which does not require any additional response
- 23 from Concorde.
- 24 43. ¶¶ 70, 71, 72 and 73 of the Determination contains information regarding Informal Settlement
- 25 which does not require any additional response from Concorde.
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II.

Request for Hearing

44. Concorde hereby formally requests a hearing on all material facts alleged in the Determination, the appropriateness of proposed penalties and regarding all other relevant issues which are the appropriate subject of an administrative hearing.

III.

Affirmative Defenses and Mitigating Factors

Without admitting any legal liability, Concorde submits the following:

45. Concorde has fully cooperated with the EPA with respect to its investigation of Concorde. Concorde has at all relevant times undertaken good faith efforts to comply with applicable laws and regulations.

46. Concorde does not have a history of noncompliance with environmental laws and regulations.

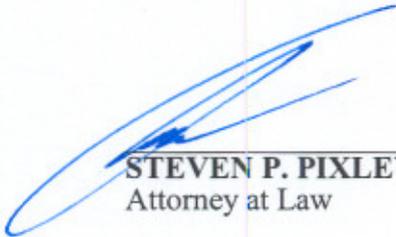
47. The potential or actual impact upon the environment caused by any violation of applicable law relating to the handling of waste described in the Determination is minimal. The minor potential for harm category would be appropriate for the alleged violations contained in the Determination.

48. The extent of any deviation from a statutory or regulatory requirement as alleged in the Determination is minimal.

49. Concorde obtained independent test results from samples of the waste substance described in the Determination. The tests were performed by Oceanic Analytical Laboratory, Inc. located in Aiea, Hawaii. The results of the laboratory analysis show that the samples are not considered hazardous pursuant to 40 C.F.R. § 261.2. The EPA Inspector failed to take samples or otherwise test the waste substance described in the Determination.

1 50. The EPA Inspector failed to advise Concorde that it was in violation of environmental laws
2 during the closing conference on March 5, 2004. The Notice of Violation was not issued until
3 February 9, 2004.

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5 Dated this 5th day of December, 2007.

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9 **STEVEN P. PIXLEY**
10 Attorney at Law
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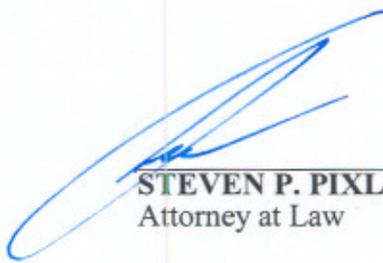
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Certificate of Service

Undersigned counsel, hereby certifies that he caused a copy of this Answer to be served upon:

Harrison Karr, Esq.
Office of the Regional Counsel
United States Environmental
Protection Agency
75 Hawthorne Street
San Francisco, California 94105

By both facsimile (415) 947-3570 and First Class Mail on December 5, 2007.



STEVEN P. PIXLEY
Attorney at Law