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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2007 NOV 30 PM 7:17
REGION IX

U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the matter of)	U.S. EPA Docket No.
)	RCRA- 8 -2008-00 <u>01</u>
Spectra-Physics Semiconductor Lasers, Inc.)	<u>09</u>
)	CONSENT AGREEMENT AND
EPA ID No. AZR000002022)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
)	22.18
<u>Respondent.</u>)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22, as revised by 64 Federal Register 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Spectra-Physics Semiconductor Lasers, Inc. ("Respondent").
2. Respondent operates a facility located at 3321 East Global Loop, Tucson Arizona, 85706 (the "Facility"). The Facility's EPA Identification Number is AZR000002022. The Facility currently employs 110 workers, and has been in operation since 1996.
3. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO") simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) obtain a permit for storage of hazardous waste (failure to meet the requirements for the conditional exemption for on-site accumulation of hazardous waste), a violation of A.A.C. R18-8-262.A [see also 40 C.F.R. § 262.34(a)]; (2) maintain a training plan, a violation of A.A.C. R18-8-265 [see also 40 C.F.R. 265.16]; and (3) respond to a request for information, a violation of Section 3007(a) of RCRA, 42 U.S.C. 6927(a) which are all violations of Section 3001 et seq., of RCRA, 42 U.S.C. §6921 et seq., and state regulations adopted pursuant thereto.¹

¹All citations to the "A.A.C." refer to the Arizona Administrative Code, contained in Title 18, Chapter 8, Department of Environmental Quality Waste Management, Article 2, Hazardous Waste. EPA is enforcing Arizona hazardous waste management program requirements as approved and authorized by the United States on October 7, 1991. 40 C.F.R. §§124, 260 through 266, 268, 270 and 273, or parts thereof, are adopted by reference. Federal

B. JURISDICTION

4. On November 20, 1985, the State of Arizona received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. §6926 and 40 C.F.R. § 271, effective December 4, 1985. The authorized program is established pursuant to the Arizona Laws Relating to Environmental Quality, Title 49, (Arizona Revised Statutes ("A.R.S.") 49-921, et seq.), and the regulations promulgated thereunder in the Arizona Administrative Code, Title 18, Chapter 8, Article 2. Effective October 7, 1991, the State of Arizona received authorization for revisions to A.R.S. 49-921, et seq. The State of Arizona has been authorized for all the regulations referenced in this CA/FO.
5. Respondent is a "person" as defined in A.R.S. 49-921 and A.A.C. R18-8-260.F.5 [*see also* 40 C.F.R. § 260.10].
6. Respondent is the "operator" of a facility as defined in A.A.C. R18-8-260.C and 270.A [*see also* 40 C.F.R. §§ 260.10 and 270.2].
7. Respondent is a "generator" of hazardous waste as defined in A.A.C. R18-8-260.C [*see also* 40 C.F.R. § 260.10].
8. Respondent generates or has generated hazardous waste including but not limited to: arsenic (D004), flammable liquids (D001, F003, F005), and corrosives (D002), which are "hazardous wastes" as defined in A.R.S. 49-921(5), A.A.C. R18-8-260.C and 261.A [*see also* Section 1004(5) of RCRA, 42 U.S.C. §6903(5), 40 C.F.R. §§ 260.10 and 261.3].
9. Respondent is, therefore, subject to the State regulations adopted pursuant to A.R.S. 49-922 [*see also* Sections 3001, 3004, and 3005 of RCRA, 42 U.S.C. §§6921, 6924 and 6925, and regulations adopted pursuant thereto].
10. Federal regulations establishing generator standards, 40 C.F.R. Part 262, became effective on November 19, 1980.
11. On May 15, 2006 EPA conducted a compliance evaluation inspection ("CEI") at the Facility. Based upon the findings EPA made during the CEI and additional information obtained subsequent to the CEI, EPA determined that the Respondent had violated A.R.S. 49-922, and regulations adopted pursuant thereto [*see also* Sections 3001, 3004 and 3005 of RCRA, 42 U.S.C. §§6921, 6924 and 6925].

statutes and regulations that are cited within 40 C.F.R. §§124 and 260 through 270 that are not adopted by reference may be used as guidance in interpreting federal regulatory language.

12. EPA alleges that Respondent's failure to comply with the requirements of A.A.C. R18-8-262.A and 270.A, constitutes a violation of Subtitle C of RCRA and Respondent is therefore subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. §6928 and Section 6001 of RCRA, 42 U.S.C. §6921.
13. Section 3008 of RCRA, 42 U.S.C. §6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA et seq., 42 U.S.C. §6921, et seq.
14. Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2), provides that when a violation of Subtitle C of RCRA occurs in a state which has been authorized under Section 3006 of RCRA, 42 U.S.C. §6926, the Administrator must notify an authorized state prior to issuing an order under Section 3008 of RCRA in that state. EPA notified the State of Arizona as required by Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2).
15. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. §6928, to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

Count I

Storage of Hazardous Waste Without a Permit

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 270.1(c)] requires each person owning or operating a RCRA hazardous waste storage facility to have a permit or grant of interim status. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste under A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 270.1].
18. A.A.C. R18-8-262.A, by incorporating 40 C.F.R. § 262.34 by reference, provides that large quantity generators of hazardous waste may accumulate hazardous waste onsite for 90 days or less, without a permit or grant of interim status, provided the generator complies with the requirements which are set forth or incorporated by reference in 40 C.F.R. § 262.34(a). Failure to comply with these requirements subjects the generator to the permitting requirements of A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 270.1].

19. On May 15, 2006, the EPA Inspectors observed that Respondent had a canister, which had been used to absorb toxic gases, that had been stored on site eight days past the 90 day limit.
20. Therefore, EPA alleges that Respondent has violated A.A.C. R18-8-262.A.

Count II

Failure To Maintain A Training Plan

21. Paragraphs 1 through 20 above are incorporated herein by this reference as if they were set forth here in their entirety.
22. A.A.C. R18-8-265 [*see also* 40 CFR 265.16] requires large quantity generators to maintain training records which document the completion of a program of classroom instruction or on-the-job training which teaches personnel who handle hazardous waste to perform their duties in a way that ensures compliance with RCRA requirements. An employee's training must be completed within 6 months after the date of employment and must include an annual review of the initial training material.
23. On May 15, 2006 Respondent could not provide a training plan for EPA inspectors. Respondent also could not provide documentation of refresher training for hazardous waste handlers for the previous year.
24. Therefore, EPA alleges that Respondent has violated A.A.C. R18-8-265.

Count III

Failure To Respond To Information Request

25. Paragraphs 1 through 24 above are incorporated herein by this reference as if they were set forth here in their entirety.
26. Section 3007(a) of RCRA [42 U.S.C. 6927(a)], allows EPA to require persons subject to RCRA to furnish information necessary for the EPA to administer the Act.
27. On May 31, 2006, EPA sent Respondent a Request For Information pursuant to Section 3007 to resolve outstanding questions which arose during the inspection which took place at the Facility.
28. Respondent failed to respond to this Information Request.

29. On August 22, 2006 EPA sent a Notice of Violation, which included a second Information Request. Respondent replied to the Notice of Violation; however, EPA informed Respondent by letter that the reply was inadequate.
30. Therefore, EPA alleges that Respondent has violated Section 3007(a) of RCRA, 42 U.S.C. 6927(a).

D. CIVIL PENALTY

31. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, *see* 61 Fed. Reg. 69360 (Dec. 31, 1996), authorizes a civil penalty of up to THIRTY TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring on March 15, 2004 or thereafter. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed TWENTY-FIVE THOUSAND ONE HUNDRED FORTY-SIX DOLLARS (\$25,146) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the "June 2003 RCRA Civil Penalty Policy." Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day violations, for case-specific circumstances, and for the economic benefit gained from non-compliance, where appropriate.

E. ADMISSIONS AND WAIVERS OF RIGHTS

32. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
33. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42

U.S.C. § 6928(b) and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

34. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent.
35. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
36. Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of operation of the Facility and shall notify EPA within seven (7) days prior to such transfer until the termination of this CA/FO.
37. The undersigned representative of Respondent hereby certifies he is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

38. Respondent consents to the assessment of and agrees to pay a civil penalty of TWENTY-FIVE THOUSAND ONE HUNDRED FORTY-SIX DOLLARS (\$25,146) in full settlement of the federal civil penalty claims set forth in this CA/FO. EPA acknowledges that payment of the civil penalty in accordance with the terms of this CA/FO constitutes full settlement of the federal civil penalty claims alleged herein against Respondent.
39. Respondent shall submit payment of the TWENTY-FIVE THOUSAND ONE HUNDRED FORTY-SIX DOLLARS (\$25,146) within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. Payment shall be made by certified or cashier's check payable to Treasurer of the United States and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

At the time payment is made, a copy of the check shall be sent to:

Danielle Carr
Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Cameron McDonald (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

40. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

41. In the event Respondent fails to meet the requirements set forth in this CA/FO, then Respondent shall pay stipulated penalties as set forth below:

For failure to submit a payment to EPA by the time required in this CA/FO: up to TWO HUNDRED FIFTY DOLLARS (\$250) per day for first to fifteenth day of delay, up to ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay, and up to ONE THOUSAND FIVE-HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter.

42. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
43. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
44. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

45. All payments shall indicate the name of the Facility, EPA identification number of the Facility, Respondent's name and address, and the EPA docket number of this action (RCRA -9-2008-00--). At the time payment is made, Respondent shall send a copy of the payment transmittal to:

Danielle Carr (ORC-1)
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Loren Henning (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

46. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.

47. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

I. RESERVATION OF RIGHTS

48. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. §6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.
49. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
50. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
51. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

J. OTHER CLAIMS

52. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, 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 the Facility.

K. MISCELLANEOUS

53. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
54. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
55. The Effective Date of this CA/FO is the date the CA/FO, after having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

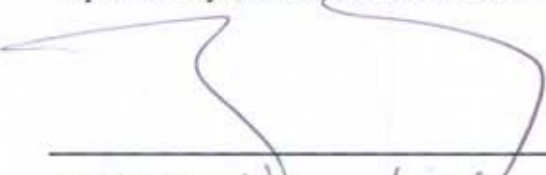
IT IS SO AGREED.

10/24/07
Date



Jeffrey B. Coyne
Vice President & Secretary
Spectra-Physics Semiconductor Lasers, Inc.

11/29/07
Date



~~Jeff Scott~~ Nancy Lindsay
Director, Waste Management Division
United States Environmental Protection Agency,
Region IX

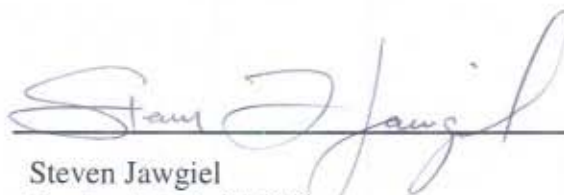
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (CA/FO) (U.S. EPA Docket No. RCRA~~9~~-2008-0001) be entered and that Spectra-Physics, Inc. pay a civil penalty of TWENTY-FIVE THOUSAND ONE HUNDRED FORTY-SIX DOLLARS (\$25,146) within thirty (30) days after the Effective Date of this CA/FO as required by Section G of this CA/FO.

This Final Order shall be effective upon filing with the Regional Hearing Clerk.

11/30/07

Date

A handwritten signature in dark ink, appearing to read "Steven Jawgiel", is written over a horizontal line.

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Jeffrey B. Coyne
Senior Vice President and General Counsel
Newport Corporation
1791 Deere Avenue
Irvine, CA 92606

FOR
Spectra-Physics
3321 East Global Loop
Tucson, AZ 85706
EPA Identification Number: AZR 000 002 022

12-5-07
Date

Danielle E. Carr
Danielle Carr
Regional Hearing Clerk
Office of Regional Counsel, Region IX