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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JUL 23 PM 4: 14
REGIONAL HEARING
CLERK

_____	x	
IN THE MATTER OF:	:	
	:	
Macy's Retail Holdings, Inc.	:	
	:	<u>CONSENT AGREEMENT</u>
	:	AND
Respondent.	:	<u>FINAL ORDER</u>
	:	
Proceeding under Section 3008	:	Docket No. RCRA-02-2008-7103
of the Solid Waste Disposal	:	
Act, 42 U.S.C. § 6928, as amended	:	
_____	x	

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, et seq. ("RCRA" or the "Act").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated pursuant to it. Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("Complainant"), of the U.S. Environmental Protection Agency, Region II ("EPA"), has been duly delegated the authority to institute this action. Complainant issued a "Complaint and Notice of Opportunity for Hearing" to Respondent on December 28, 2007, bearing the docket number listed above. The Complaint alleged that Respondents had violated requirements of RCRA and regulations concerning the management of hazardous waste.

The parties have reached an amicable resolution of this matter and have agreed to this Consent Agreement and Final Order as a resolution of this proceeding without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Macy's Retail Holdings, Inc. (hereinafter "Macy's" and/or "Respondent"). Respondent is located at 7 West Seventh Street, Cincinnati, Ohio 45202.
2. Respondent owns and operates approximately 850 stores in forty-five (45) states (including Macy's stores at Macy's Albany - Crossgates Mall, 120 Washington Avenue Extension, Albany, N.Y. 12203 (hereinafter referred to as "Respondent's Crossgates Mall Store"), and at the Roosevelt Field Mall, 630 Old Country Road, Garden City, NY 11530 (hereinafter referred to as "Respondent's Roosevelt Field Mall Store"), both stores are hereinafter referred to collectively as "Respondent's two New York stores"), the District

- of Columbia, Guam, and Puerto Rico under the names of, *inter alia*, Macy's and Bloomingdales. Respondent employs approximately 210,000 people.
3. Respondent Macy's Retail Holdings, Inc. owns and operates approximately seventy-five (75) stores in New York, New Jersey, and Puerto Rico.
 4. Respondent is a "person," as defined at Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b)(139).
 5. In the course of normal operations of each of its stores, Respondent generates "solid waste," as that term is defined at 6 NYCRR § 371.1(c).
 6. In the course of normal operations of each of its stores, Respondent generates "hazardous waste," as that term is defined at 6 NYCRR § 371.1(d).
 7. Respondent generates spent lamps, a solid and potentially hazardous waste stream, at Respondent's two New York stores.
 8. Spent lamps may be handled under the alternative standards provided under the Universal Waste Rules, codified in federal regulations at 40 C.F.R. Part 273 and in New York State regulations at 6 NYCRR Part 374-3.
 9. Respondent's two New York Stores each have been and remain a Small Quantity Handler of Universal Waste as that term is defined at 6 NYCRR § 374-3.1(I).
 10. On March 15 and 29, 2007, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, an authorized representative of EPA conducted inspections of Respondent's two New York stores.
 11. At the time of these inspections, neither the Crossgates Mall store nor the Roosevelt Field Mall store had implemented a spent lamp program. Spent lamps generated at these two stores were disposed of in the trash and handled as solid waste.
 12. The types of lamps that were used at one or both of Respondent's two New York stores include the following: (1) incandescent lamps, (2) fluorescent lamps, (3) high pressure sodium vapor lamps, (4) mercury vapor lamps, and (5) metal halide lamps.
 13. Prior to the date of EPA's inspections at Respondent's two New York stores, Respondent had not determined, and did not have a third-party determine on its behalf, whether its spent fluorescent, high pressure sodium vapor, mercury vapor lamps, and metal halide lamps were hazardous wastes.
 14. Respondent's failures to have made, or to have a third-party make on its behalf, a hazardous waste determination for its spent fluorescent, high pressure sodium vapor,

mercury vapor lamps, and metal halide lamps constitute violations of 6 NYCRR § 372.2(a)(2).

15. As of the time of EPA's inspections of Respondent's two New York Stores, Respondent had disposed of spent fluorescent, high pressure sodium vapor, mercury vapor lamps, and metal halide lamps in trash compactors. The ordinary operation of the trash compactors would have broken the spent lamps and caused a release to the air and/or other media of some of the lamps' contents.
16. Respondent's failures to ensure that spent lamps were managed in a way (as specified in the regulation) that prevented releases to the environment constitute violations of 6 NYCRR § 374-3.2(d)(4).
17. In the alternative, Respondent's failures to maintain and operate its two New York Stores to minimize the possibility of any unplanned sudden or non-sudden releases of hazardous waste or hazardous waste constituents to the air, soil, surface water which could threaten human health or the environment constitute violations of 6 NYCRR § 373-2.3(b) and 6 NYCRR § 373-3.3(b).
18. Respondent has informed EPA that it is managing and intends to continue to manage its waste lamps under the Universal Waste standards set out in 6 NYCRR § 374-3.
19. Respondent has informed EPA that it accumulates less than 5,000 kilograms of total Universal Waste (including all mercury-containing equipment calculated collectively) at any time at each of its facilities.
20. The parties have agreed to resolve this matter as per the terms herein below.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Complainant hereby enters into the following Consent Agreement with Respondent. The parties agree that to the extent it has not already done so, Respondent shall:

1. commencing on the effective date of this Compliance Order, determine whether solid wastes generated at all of Respondent's New York, New Jersey and Puerto Rico stores are hazardous wastes;
2. within thirty (30) calendar days of the effective date of this Compliance Order, comply with all applicable federal and state regulatory requirements for the management of hazardous waste by generators and universal waste by handlers at all of Respondent's New York, New Jersey and Puerto Rico stores;

3. within thirty (30) calendar days of the effective date of this Compliance Order, submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance with each of the requirements set forth in paragraphs 1 and 2 above, for all of Respondent's New York, New Jersey and Puerto Rico stores. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement; and,
4. submit the above required information and notices to:

Steven Petrucelli
RCRA Compliance Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

5. For the purposes of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the specific factual allegations contained in the Complaint; and (c) neither admits nor denies the above Findings of Fact and Conclusions of Law in this Consent Agreement.
6. Respondent shall pay a civil penalty to EPA in the total amount of **Forty-Nine Thousand Seven Hundred Twenty-five Dollars (\$49,725.00)**. Such payment shall be made as indicated below, by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payments are made by checks, then the checks shall be made payable to the **"Treasurer, United States of America,"** and shall be mailed to:

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

Each check shall be identified with a notation thereon: In the Matter of Macy's Retail Holdings, Inc., and shall bear thereon the Docket Number RCRA-02-2008-7103. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read " D68010727

Environmental Protection Agency.”

6) Name of Respondent: Macy's Retail Holdings, Inc.

7) Case Number: **RCRA-02-2008-7103.**

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Carl R. Howard, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

and;

Office of the Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

The payment must be received on or before forty-five (45) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO. The date by which payment must be received shall hereinafter be referred to as the “due date.”

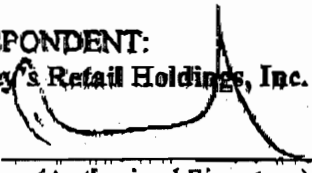
- a. Failure to pay the penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if the payment is not received on or before the due date interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which any balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of the due date.
 - d. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.
 - e. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
7. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to

comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

8. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
9. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
10. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
11. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
12. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
13. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
14. Each party hereto agrees to bear its own costs and fees in this matter.
15. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

Re: Macy's Retail Holdings, Inc.
Docket Number RCRA-02-2008-7103

RESPONDENT:
Macy's Retail Holdings, Inc.

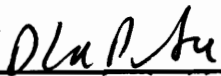
BY: 
(Authorized Signature)

NAME: DENNIS J. BRODERICK
(PLEASE PRINT)

TITLE: _____

DATE: _____

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

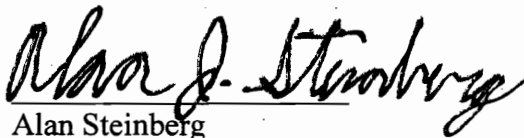
DATE: 7/17/08

Re: Macy's Retail Holdings, Inc.
Docket Number RCRA-02-2008-7103

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement. The Agreement entered into by the parties is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. Section 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk.

BY:



Alan Steinberg
Regional Administrator
U.S. Environmental Protection Agency -
Region II
290 Broadway
New York, New York 10007-1866

DATE: JUL 23 2008

Re: Macy's Retail Holdings, Inc.
Docket Number RCRA-02-2008-7103

Certificate of Service

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number RCRA-02-2008-7103, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

Copy by Pouch Mail:

Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

**Copy by Certified Mail,
Return Receipt Requested**

Rachelle Stern, Esq.
Macy's Inc.
151 West 34th Street
Law Department - 13th Floor
New York, NY 10001

Dated: New York, New York

7-23-08

