



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 28 2007

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 OCT -2 PM 2:50
REGIONAL HEARING
CLERK

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Crossgates Mall Company Newco, LLC.
c/o Corporation Services Company
80 State Street
Albany, New York 12207

Re: **In the Matter of Crossgates Mall Company, LP,
Pyramid Management Group, Inc., and
Crossgates Mall Company Newco, LLC.,
Docket Number RCRA-02-2007-7113**

Dear Sir/Madam:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

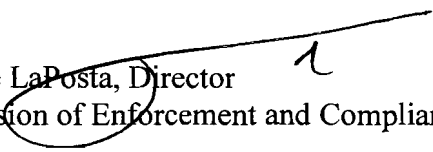
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose the "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and the nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2007 OCT -2 PM 2:53
REGIONAL HEARING
CLERK

SEP 28 2007

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Crossgates Mall Company, LP,
c/o The Pyramid Companies
The Clinton Exchange
4 Clinton Square
Syracuse, New York 13202-1078

Re: **In the Matter of Crossgates Mall Company, LP,
Pyramid Management Group, Inc. and
Crossgates Mall Company Newco, LLC
Docket Number RCRA-02-2007-7113**

Dear Sir/Madam:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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290 Broadway, 16th floor
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If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 OCT -2 PM 2:53

REGIONAL HEARING
CLERK

In The Matter of:

**Crossgates Mall Company, LP,
Pyramid Management Group, Inc.,
and,
Crossgates Mall Company Newco,
LLC,**

Respondent.

Proceeding Under Section 3008 of the
Solid Waste Disposal Act, as amended.

**COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING**

Docket No. RCRA-02-2007-7113

COMPLAINT

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 (HSWA), 42 U.S.C. 6901 *et seq.* (referred to collectively as the Act or RCRA). The United States Environmental Protection Agency (EPA) has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 - 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING (Complaint) serves notice of EPA's preliminary determination that **Crossgates Mall Company, LP, Pyramid Management Group, Inc., and, Crossgates Mall Company Newco, LLC**, have violated requirements of the authorized New York hazardous waste program:

Section 3006(b) of the Act, 42 U.S.C. 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA, See 67 Fed. Reg. 49864 (August 1, 2002), and 70 Fed. Reg. 1825 (January 11, 2005). This includes most EPA regulations issued as of July 1, 1999.

Section 3008(a)(2) of the Act, 42 U.S.C. 6928(a)(2), authorizes EPA to enforce the regulations constituting the authorized State program and EPA retains primary responsibility for

the enforcement of certain requirements promulgated pursuant to HSWA for which the State has not yet been authorized.

Section 3008(a)(1) of RCRA, 42 U.S.C. 6928(a)(1), provides, in part, that “whenever on the basis of any information the Administrator [of EPA] determines that any person has violated or is in violation of any requirement of this subchapter [Subtitle C of RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation.” Section 3008(a)(2) of RCRA, 42 U.S.C. 6928(a)(2) provides, in part, that “[i]n the case of a violation of any requirement of [Subtitle C of RCRA] where such violation occurs in a State which is authorized to carry out a hazardous waste program under [Section 3006 of RCRA, 42 U.S.C. 6926], the Administrator [of EPA] shall give notice to the State in which such violation has occurred prior to issuing an order.”

Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), “[any penalty assessed in the order [issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a)] shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of [Subtitle C of RCRA].”

Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) to \$32,500 for any violation occurring after March 15, 2004.

Prior to the issuance of this Complaint, notice in accordance with the requirements of Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), has been given to the State of New York.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, who has been duly delegated the authority to institute this action, hereby alleges:

Background Allegations

1. The facility that is the subject of this action is the Crossgates Shopping Mall at 1 Crossgates Mall Road, Albany, NY 12203 (the “Mall” or the “Facility”). The Mall has two levels of stores and five (5) anchor stores.
2. The Respondents in the action include:
 - a. Crossgates Mall Company, LP, an owner and/or operator of the Facility,
 - b. Pyramid Management Group, Inc., an owner and/or operator of the Facility, and

c. Crossgates Mall Company Newco, LLC., an owner of the real estate on which the Crossgates Shopping Mall is located and which is an owner and/or operator of the Facility.

Respondents collectively are hereinafter referred to in the singular as Respondent.

3. Each Respondent listed in paragraph 2, above, 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).
4. The Crossgates Shopping Mall opened in 1984; therefore, Respondent's Facility was not an existing facility, as that term is defined at 6 NYCRR § 370.2(b), in 1980.

Hazardous Waste Generation

5. In the course of normal operations of the Mall, Respondent generates "solid waste," as that term is defined at 6 NYCRR § 371.1(c).
6. In the course of normal operations of the Mall, Respondent generates "hazardous waste," as that term is defined at 6 NYCRR § 371.1(d).
7. Many of the spent lamps generated by Respondent may exhibit the characteristic of toxicity under the toxic characteristic leachate procedure (TCLP) for metals, in particular, mercury and sometimes lead.
8. Spent lamps may be subject to the less stringent standards provided under the universal waste rules and regulations found at 6 NYCRR § 374-3.2(d)(4).
9. Respondent has been and remains a Small Quantity Handler of Universal Waste as that term is defined at 6 NYCRR § 374-3.1(i).

Hazardous Waste Notification

10. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, all persons conducting activities that generate or otherwise cause hazardous waste to be handled in other ways are required to notify EPA of their hazardous waste activities.
11. Pursuant to 6 NYCRR § 371.1(f), a person who generates 100 kgs. or less of non-acute hazardous waste in a calendar month (a conditionally exempt small quantity generator - CESQG) may accumulate hazardous waste on-site without being subject to full regulation under 6 NYCRR § 370 through 376, and the notification requirements of § 3010 of RCRA, 42 U.S.C. § 6930, provided that it, inter alia, determines whether each solid waste

generated at its facility is a hazardous waste as required by 6 NYCRR § 372.2(a)(2) in accordance with 6 NYCRR § 371.1(f)(6)(i).

12. Respondent did not make a hazardous waste determination on each solid waste generated at its facility and therefore could not qualify for the less stringent requirements available to a conditionally exempt small quantity generator of hazardous waste.
13. After inspecting the Mall on March 15, 2007, EPA assigned an EPA Identification Number to Crossgates Mall. The EPA Identification Number assigned to Crossgates Mall is NYN008015992.

EPA Investigatory Activities

14. On or about March 15, 2007, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, an authorized representative of EPA conducted an inspection (hereinafter the "inspection") of the Facility.
15. Respondent has assumed the lead responsibility for the removal, storage, and disposal of wastes generated at the Mall (except for certain anchor stores which handle their own solid waste disposal).
16. Respondent provides trash compactors at various locations outside the Mall so that store personnel and Mall maintenance personnel can dispose of the wastes that are generated. The compactors are closed vessels with a large "plunger" that crushes the waste to maximize space. The trash compactors are serviced by Waste Management.
17. When full, the vessels are carted by Waste Management to the City of Albany Landfill to be emptied of their contents.
18. The types of lamps that were and are currently used at the Mall include the following: (1) incandescent lamps, (2) fluorescent lamps, (3) high pressure sodium vapor lamps, (4) metal halide lamps, and (5) neon lamps.
19. At the time of EPA's inspection, Respondent was responsible for the removal of spent lamps and disposed of them in the trash compactors at the Mall.
20. Prior to December 2005, Respondent placed all spent lamps in the trash compactors whether they were removed in bulk during change-outs or one at a time during daily maintenance.
21. More recently, during certain bulk removals and change-outs (further described below in paragraphs 22, 26, and 29, below), Respondent contracted Northeast Lamp Recycling (NLR) to remove and recycle the waste lamps generated during those specific incidents.

22. In December 2005, Respondent hired NLR to conduct a change-out of all incandescent lamps being used in the mall. Fixtures were changed as appropriate to fit compact fluorescent lamps. At this time, the incandescent lamps generated during the change-out were recycled. These lights were removed from service in December 2005 and recycled in January 2006. Prior to this, spent incandescent lamps were disposed of in the regular trash.
23. At the time of the inspection, Respondent did not have a recycling program addressing spent fluorescent lamps. Spent fluorescent lamps were disposed of in the regular trash.
24. At the time of the inspection, Respondent did not have a recycling program addressing spent high pressure sodium vapor lamps. These lamps were used in exterior wall mounted fixtures. Spent high pressure sodium vapor lamps were disposed of in the regular trash.
25. Prior to the inspection, Respondent did not have a program addressing spent metal halide lamps. Respondent used these lamps in the parking lot, as accent lights, and as exterior wall mounts. Spent metal halide lamps were disposed of in the regular trash.
26. At the time of the inspection, Respondent was storing approximately 200 spent metal halide parking lot lamps that it generated during a change-out in late 2006 in a locked storeroom on the third floor near the management offices of the Mall.
27. At the time of the inspection, two (2) spent fluorescent tubes were observed laying on top of the open boxes of spent metal halide lamps.
28. At the time of the inspection, Respondent stored the abovementioned spent metal halide lamps in cardboard boxes. These cardboard boxes were open and had no universal waste markings on them.
29. At the time of the inspection, Respondent's personnel did not know how many spent lamps were generated, handled, recycled and/or disposed of from the regular maintenance operations at the Mall. Respondent's personnel only knew the amount and weight of spent lamps that it generated during specific change-outs such as the December 2005 change-out of incandescent lamps to fluorescent lamps. In this case, NLR removed and recycled 1072 incandescent lamps weighing approximately 772 pounds. In the case of the 2006 metal halide parking lot lamp change-out, NLR removed 246 lamps which had not as of the time of the inspection been taken from the store room. Each of these 246 spent metal halide lamps weighed approximately 20 pounds.
30. Spent lamps may contain significant concentrations of TCLP metals, enough to make them hazardous waste. The spent lamps generated at Respondent's Facility were

generated by normal maintenance activities in and outside the mall by mall personnel and by certain leaseholders.

31. At the time of the inspection, Respondent was not managing its spent lamps as universal waste under 6 NYCRR § 374-3. Respondent's personnel talked about starting their own spent lamp recycling program but did not have one in place.
32. As a result of the inspection, on or about April 19, 2007, pursuant to Section 3008 of the Act, EPA issued Respondent a Notice of Violation (NOV) in which EPA described, inter alia, several violations, observed during the inspection, of 6 NYCRR § 374-3.2(d)(4) (failure to manage lamps to prevent releases), and 6 NYCRR § 372.2(a)(2) (failure to make a hazardous waste determination).
33. On or about April 19, 2007, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, EPA requested information from Respondent (hereinafter the "Information Request" or "IR") relating to the generation and management of hazardous waste, in particular, spent incandescent, fluorescent, mercury vapor, high pressure sodium, high density discharge, metal halide, and neon lamps.

Respondent's Response to NOV and Information Request (IR)

34. On or about May 18, 2007, EPA received a response (hereinafter the "Respondent's Response") from Respondent to the NOV and Information Request.
35. Respondent responded to the allegations in the NOV by stating that since the inspection it had instituted a spent lamp program and had contracted with NLR. NLR had provided appropriately marked boxes and provided a draft inventory list so that Respondent could now mark the dates that spent lamps were placed in storage.
36. In late May 2007, Respondent contracted NLR to transport and remove the spent metal halide lamps it had been storing (as described above in paragraph 26).
37. In its response to the IR, Respondent confirmed the findings of the inspection as described in the NOV regarding its improper management of spent lamps.
38. In its response to Question 2 (f)(i), (ii), (iv), and (vi) of the IR, Respondent stated that it and its tenants disposed of spent (i) incandescent, (ii) fluorescent, (iv) high pressure sodium, and (vi) metal halide lamps in the regular municipal solid waste trash compactors without making a hazardous waste determination.

COUNT 1 - Failure to Make Hazardous Waste Determinations

39. Complainant realleges each allegation contained above in paragraphs 1 through 38, with the same force and effect as if fully set forth below.
40. Pursuant to 6 NYCRR § 372.2(a)(2), a person who generates a solid waste must determine whether that solid waste is a hazardous waste, using the procedures specified in that provision (hereinafter a “hazardous waste determination”).
41. In accordance with 6 NYCRR § 371.1(c), subject to certain inapplicable exclusions, a solid waste is defined as any discarded, abandoned, recycled, or inherently waste-like material. In accordance with the same provision, materials are solid wastes if they are abandoned by being disposed of, burned or incinerated.
42. Prior to, on the date of, and subsequent to EPA’s inspection, Respondent utilized incandescent, fluorescent, high pressure sodium vapor, and metal halide lamps to illuminate the interior and exterior of the Mall.
43. Prior to, on the date of, and subsequent to EPA’s inspection, Respondent had taken out of service and disposed of in the regular municipal trash spent incandescent, fluorescent, high pressure sodium vapor, and metal halide lamps as non-hazardous solid waste.
44. Each of the spent lamps listed in paragraph 43 above is a “discarded material” and, as such, meets the definition of a “solid waste”, as that term is defined at 6 NYCRR § 371.1(c).
45. At and prior to the date of EPA’s inspection, Respondent failed to determine, and did not have a third-party determine on its behalf, whether its spent incandescent, fluorescent, high pressure sodium vapor, and metal halide lamps were hazardous wastes.
46. Respondent’s failures to have made, or to have a third-party make on its behalf, a hazardous waste determination for its spent incandescent, fluorescent, high pressure sodium vapor, and metal halide lamps constitute one or more violations of 6 NYCRR § 372.2(a)(2).
47. Six NYCRR 372.2(a)(2) constitutes a requirement of Subtitle C of RCRA for purposes of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Count 2 - Failure to Prevent and/or Minimize Releases

48. Complainant realleges each allegation contained above in paragraphs 1 through 38 with the same force and effect as if fully set forth below.

49. At the time of EPA's inspection, Respondent had generated spent incandescent, fluorescent, high pressure sodium vapor, and metal halide lamps.
50. At the time of EPA's inspection, Respondent had disposed in the regular trash the spent incandescent, fluorescent, high pressure sodium, and metal halide lamps that it generated.
51. The spent fluorescent, incandescent, high pressure sodium, and metal halide lamps generated by Respondent were solid wastes.
52. At the time of EPA's inspection, Respondent had failed to make hazardous waste determinations on the spent fluorescent, incandescent, high pressure sodium vapor, and metal halide lamps it generated before it disposed of them in the trash.
53. Because Respondent failed to make hazardous waste determinations on the spent lamps it generated, and failed to manage its spent lamps as universal waste, Respondent was subject to full regulation under 6 NYCRR §§ 370 through 376.
54. Pursuant to 6 NYCRR § 373-2.3(b), facilities must be maintained and operated 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.
55. Pursuant to 6 NYCRR § 372.2(a)(2)(iv), a generator of hazardous waste may refer to 6 NYCRR § 374-3 for alternate waste management standards for universal wastes which include lamps as defined in 6 NYCRR § 374-3.1(i). A used lamp becomes a waste on the date it is discarded. An unused lamp becomes a waste on the date the handler decides to discard it. 6 NYCRR § 374-3.1(e)(3).
56. Six NYCRR § 374-3.2(d)(4) (applicable to a "Small Quantity Handler of Universal Waste") requires that lamps be managed in a way (specified in the regulations) that prevents releases of any universal waste or component of universal waste to the environment.
57. At the time of EPA's inspection, and at times both prior thereto and subsequent thereto, Respondent was not managing the spent incandescent, fluorescent, high pressure sodium vapor, and metal halide lamps at the Mall pursuant to 6 NYCRR § 374-3.2(d)(4).
58. At the time of EPA's inspection, Respondent had disposed of spent incandescent, fluorescent, high pressure sodium vapor, and metal halide lamps in trash compactors. The trash compactors would have broken the spent lamps and caused a release of the lamps' contents.

59. At the time of EPA's inspection, Respondent had stored spent metal halide lamps from the parking lot in open boxes. The open boxes were not structurally sound and provided little if any protection and when the spent lamps were broken, releases of mercury likely would have occurred. The spent lamps were being managed in a manner not adequate to prevent breakage which, in turn, increased the risk of a release of mercury.
60. At the time of EPA's inspection, several spent fluorescent tubes were being stored on top of the spent metal halide parking lot lamps. These spent fluorescent tubes were not boxed and were not protected from being broken. These could have easily been broken and the contents, including mercury, released.
61. Many of the spent incandescent, fluorescent, high pressure sodium vapor, and metal halide lamps that Respondent generated were likely to have contained at least one contaminant in a concentration that would classify these spent lamps as hazardous waste under 6 NYCRR 371.3(e).
62. Respondent's failure to ensure that spent lamps were managed in a way (as specified in the regulation) that prevented releases to the environment constitutes a violation of 6 NYCRR § 374-3.2(d)(4).
63. In the alternative, Respondent's failure to maintain and operate its facility 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 constitutes a violation of 6 NYCRR § 373-2.3(b).

PROPOSED CIVIL PENALTY

The Complainant proposes, subject to the receipt and evaluation of further relevant information, that Respondent pay a civil penalty in the amount of \$ **45,500** for the violations alleged herein.

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to “take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case and has used EPA’s 2003 RCRA Civil Penalty Policy. A copy of this penalty policy is available upon request or can be found on the Internet at “www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf.” This guidance policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) \$32,500 for any violation occurring on or after March 15, 2004. 40 C.F.R. Part 19.

A penalty calculation worksheet and narrative explanation to support the penalty figure for the RCRA violation cited in this Complaint is included in Attachment I, below. The matrix employed in the determination of the penalty is included as Attachment II, below. These Attachments are incorporated by reference herein.

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant issues Respondent the following Compliance Order:

- i. Respondent shall, commencing on the effective date of this Compliance Order, determine whether solid wastes generated at the Mall are hazardous wastes.
- ii. Respondent shall, 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/or universal waste by handlers.

- iii. Respondent shall, 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 for each of the requirements set forth herein. If the 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.
- iv. Respondent shall submit the above required information and notices to:

Philip Clappin
RCRA Compliance Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 28th Floor
New York, New York 10007-1866
Phone: 212-637-3751

This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. *See* 42 U.S.C. §6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise release Respondent from liability for any violations occurring or existing at the mall or by its leaseholders. Further, nothing herein waives, prejudices or otherwise affects the EPA's right (or the right of the United States on behalf of the EPA) to enforce any applicable provisions of law regarding Respondent or its leaseholders.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order regarding hazardous waste violations is liable for a civil penalty of up to \$32,500 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by the EPA or the State of New York.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS." These rules are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent are entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer(s) to the Complaint, and such Answer(s) must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer(s) to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer(s) to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer(s), the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer(s) shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent dispute (and thus intend to place at issue in the proceeding) and (3) whether Respondent request a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer(s) facts that constitute or that might constitute the grounds of its defense may preclude Respondent at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent(s), a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). If, however, Respondent requests a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless either Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in their Answer(s) to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer(s) to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer(s) to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent(s) without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent(s), and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent(s) without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives the right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the Agency's Environmental Appeals Board ("EAB"), Respondent must do so "[w]ithin 30 days after the initial decision is served upon the parties." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that they believe is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the financial or economic impact the proposed penalty would have on Respondent and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Carl R. Howard, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
Phone: 212-637-3216

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer(s) to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives

the right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent entering into a settlement does not extinguish, waive, satisfy or otherwise affect their obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

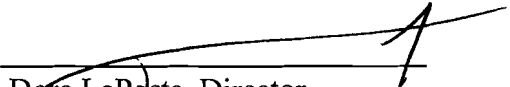
RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer(s), Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

In re: Crossgates Mall Company, LP,
Pyramid Management Group, Inc., and,
Crossgates Mall Company Newco, LLC.
Docket Number RCRA-02-2007-7113

Dated: SEPTEMBER 28, 2007
New York, New York

COMPLAINANT:


Dere LaPosta, Director
Division of Enforcement and Compliance
Assistance
Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, NY 10007-1866

To:
Crossgates Mall Company, LP,
c/o The Pyramid Companies
The Clinton Exchange
4 Clinton Square
Syracuse, NY 13202-1078

Pyramid Management Group, Inc.
c/o The Pyramid Companies
Legal Counsel
4 Clinton Square
Syracuse, NY 13202

Crossgates Mall Company Newco, LLC.
c/o Corporation Service Co.
80 State Street
Albany, NY 12207

cc: Thomas Killeen, Chief
Hazardous Waste Compliance Section
Bureau of Hazardous Waste Management
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7251

In re: Crossgates Mall Company, LP,
Pyramid Management Group, Inc., and,
Crossgates Mall Company Newco, LLC.
Docket Number RCRA-02-2007-7113

CERTIFICATE OF SERVICE

This is to certify that on OCT - 2, 2007, I caused to be served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2007-7113 (hereinafter referred to as the "Complaint"), together with Attachments I and II and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Crossgates Mall Company, LP,
c/o The Pyramid Companies
The Clinton Exchange
4 Clinton Square
Syracuse, NY 13202-1078

Pyramid Management Group, Inc.
c/o The Pyramid Companies
Legal Counsel
4 Clinton Square
Syracuse, NY 13202

Crossgates Mall Company Newco, LLC.
c/o Corporation Service Co.
80 State Street
Albany, NY 12207

On said day, I hand carried the original and a copy of the Complaint, with the accompanying attachments, to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Dated: OCT - 2, 2007
New York, New York

Mildred Baez

Attachment I - Penalty Calculation Worksheets

Penalty Calculation Worksheet - Count 1

Requirement Violated: Count 1: Failure to determine whether solid wastes (incandescent lamps, fluorescent lamps, high pressure sodium vapor lamps, and metal halide lamps) are hazardous wastes, 6 NYCRR § 372.2(a)(2).

1. Gravity based penalty from matrix	\$ 22,750
(a) Potential for Harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	Not Applicable
3. Multiply line 2 by number of days of violation minus 1.	Not Applicable
4. Add line 1 and line 3	\$ 22,750
5. Percent increase/decrease for good faith.	Not Applicable
6. Percent increase for willfulness/negligence.	Not Applicable
7. Percent increase for history of noncompliance.	Not Applicable
8. Total lines 5 through 7.	Not Applicable
9. Multiply line 4 by line 8.	\$ 22,750
10. Calculate economic benefit.	Not Applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$ 22,750

Narrative Explanation in Support of Penalty Figure - Count 1

1. Gravity Based Penalty

1. Potential for Harm - The potential for harm for failure to make hazardous waste determinations was determined to be Major. Such failure poses a substantial adverse effect on the statutory purposes and regulatory procedures for implementing the RCRA program by substantially increasing the probability that Respondent will mismanage the solid waste that it has failed to determine is a hazardous waste. And in fact in this case, the spent lamps were improperly disposed of in the trash.
2. Extent of Deviation - The extent of deviation present in this violation was determined to be Moderate. Respondent failed to determine whether or not the spent lamps it generated were hazardous wastes. This was the principal hazardous waste stream generated by Respondent. However, because Respondent's contractor recycled in accordance with the universal waste regulations the large quantity of lamps generated during several of its large lamp change-outs (namely, (1) its December 2006 incandescent change-out to small, compact fluorescent bulbs and, (2) its 2006 parking lot metal halide change-out to metal halide lamps with pulse start), EPA selected Moderate Extent of Deviation.
3. The applicable cell ranges from \$ 19,500 to \$ 25,999. The mid point of the cell matrix was selected.
4. Multiple/Multi-day - Failure to make a hazardous waste determination is being considered a one-time occurrence.

2. Adjustment Factors

1. Good Faith - Based upon available information that Respondent did not identify and take action to correct the violation prior to the Inspection, no adjustment for good faith has been made.
2. Willfulness/Negligence Not Applicable
3. History of Compliance Not Applicable
4. Ability to Pay Not Applicable
5. Environmental Project Not Applicable
6. Other Unique Factors Not Applicable

3. **Economic Benefit** - Respondent is not believed to have realized any significant gain for the violation cited in this Count, as its staff could have made such determinations at no additional cost to Respondent beyond salaries already paid.

Penalty Calculation Worksheet - Count 2

Requirement Violated: Count 2: Failure to prevent and/or minimize releases, 6 NYCRR § 373-2.3(b) or 6 NYCRR § 374-3.2(d)(4).

1. Gravity based penalty from matrix	\$ 22,750
(a) Potential for Harm.	MAJOR
(b) Extent of Deviation.	MODERATE
2. Select an amount from the appropriate multi-day matrix cell.	Not Applicable
3. Multiply line 2 by number of days of violation minus 1.	Not Applicable
4. Add line 1 and line 3	\$ 22,750
5. Percent increase/decrease for good faith.	Not Applicable
6. Percent increase for willfulness/negligence.	Not Applicable
7. Percent increase for history of noncompliance.	Not Applicable
8. Total lines 5 through 7.	Not Applicable
9. Multiply line 4 by line 8.	\$ 22,750
10. Calculate economic benefit.	Not Applicable
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.	\$ 22,750

Narrative Explanation in Support of Penalty Figure - Count 2

1. Gravity Based Penalty

1. Potential for Harm - The potential for harm to human health and the environment was determined to be Major. The potential for harm is substantially increased by the manner in which Respondent managed and disposed of the spent lamps it generated. Spent lamps were stored in open boxes, placed into trash compactors where the lamps were broken and then were disposed of in a municipal landfill.

Regarding the risk of human or environmental exposure, many current and past manufactured lamps, when taken out of service for disposal, are "toxic characteristic hazardous wastes" because of the concentration of metals such as mercury or lead. The nervous system (human and non-human) is very sensitive to all forms of mercury, a neurotoxin. Exposure to high levels of metallic, inorganic, or organic mercury can potentially permanently damage the brain, kidneys, and a developing fetus. Lead also has well known potentially deleterious effects. At the Crossgates Mall, improper handling and disposal of spent lamps in the regular trash could have led to the release of mercury or lead into the environment.

2. Extent of Deviation - The extent of deviation present in this violation was determined to be Moderate. Prior to, at the time of, and subsequent to EPA's inspection, Respondent disposed of the spent lamps in the compactors and the compacted spent lamps went into the City of Albany Landfill. Because Respondent's contractor recycled in accordance with the universal waste regulations the large quantity of lamps generated during several of its large lamp change-outs; namely, (1) its December 2005 incandescent change-out to small, compact fluorescent bulbs and, (2) its 2006 parking lot metal halide change-out to metal halide lamps with pulse start, EPA selected Moderate Extent of Deviation.
3. The applicable cell ranges from \$ 19,500 to \$ 25,999. The mid- point of the cell range was selected.
4. Multiple/Multi-day - A multi day penalty is not being sought at this time.

2. Adjustment Factors

1. Good Faith - Based upon available information that Respondent did not identify and take action to correct the violation prior to the Inspection, no adjustment for good faith has been made.
2. Willfulness/Negligence Not Applicable
3. History of Compliance Not Applicable
4. Ability to Pay Not Applicable

- 5. Environmental Project Not Applicable
- 6. Other Unique Factors Not Applicable

3. **Economic Benefit** -At this time, EPA is not seeking to recover the economic benefit, if any because it is believed to be under the level considered to be relatively insignificant under the 2003 RCRA Civil Penalty Policy.

Attachment II

Gravity-Based Penalty Matrix

EXTENT OF DEVIATION FROM REQUIREMENT				
P O T E N T I A L F O R H A R M		Major	Moderate	Minor
	Major	\$32,500 To 26,000	\$25,999 To 19,500	\$19,499 To 14,300
	Moderate	\$14,299 To 10,400	\$10,399 To 6,500	\$6,499 To 3,900
	Minor	\$3,899 To 1,950	\$1,949 To 650	\$649 To 130