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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2014 JAN 14 P 3:21
REGIONAL HEARING
CLERK

January 8, 2014

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

**Re: In the Matter of Advanced Recovery, Inc.
Docket Number RCRA-02-2013-7106**

Dear Sir/Madam:

We enclose and serve Respondent's Answer with regard to the above matter.

Would you kindly stamp the extra copy of this letter with the date of receipt and return in the enclosed self-addressed stamped envelope?

Very truly yours,

ORSECK LAW OFFICES PLLC

By: Kirk O. Orseck

KO/ds
Encl.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

-----X

In the Matter of

Advanced Recovery, Inc.,

Docket #RCRA-02-2013-7106

Respondent

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

-----X

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RESPONDENT'S ANSWER

Respondent, Advanced Recovery, Inc., as and for its answer to the complaint, and by its attorneys, the undersigned, states as follows:

(1) Admits allegations of the complaint marked and designated "1", "3", "9", "14", "15", "30", "31", "35", "37", "43", "45" and "46."

(2) Denies allegations of the complaint marked and designated "6", "7", "8", "10", "11", "12", "13", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "32", "33", "34", "38", "39", "40", "41", "44", "47", "48", "49", "50", "51", "52", "53", and "54."

(3) Denies knowledge or information to form a belief as to allegation of the complaint marked and designated "2."

(4) Respondent has terminated its fluorescent bulb recycling program. Therefore, the Compliance Order affiliated with this case should be considered satisfied.

(5) The respondent's grounds for defense and disputed facts are largely included in respondent's response to the agency's Information Request dated February 20, 2013, attached hereto as Exh A. However, additional defenses include:

- (A) That the materials were collected from commercial, non-residential sources.
- (B) The penalty calculation is disproportionate to the allegations (i.e. – eight drums of broken fluorescent bulbs do not constitute a major potential for harm, nor a major deviation from practice).

(6) Respondent requests a hearing to review these allegations.

Dated: Liberty, New York
January 8, 2014

Yours, etc.,

ORSECK LAW OFFICES PLLC

By: 

Kirk O. Orseck

Attorneys for Respondent
PO Box 469
Liberty, NY 12754
(845)292-5800

ADVANCED RECOVERY INC

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2/20/13

Abdool Jabar
Environmental Engineer
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

RE: Advanced Recovery Inc. NYR000157636 Notice of Violation/RCRA § 3007 Information Request

Mr. Jabar:

Below are our specific responses to each section outlined in the Notice of Violation – Information Request:

Enclosure I

- 1. Pursuant to 6 NYCRR § 373-3.3 (a), a facility should be maintained and operated to minimize the possibility of a fire or explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.

At the time of the inspection, Advanced Recovery was:

- (a) Operating a bulb crusher and there was white dust and shards of glass accumulating on the top of the bulb crusher and the surround area.

In an attempt to better service our local Department of Public Works yards residential recycling programs, Advanced Recovery Inc. had made an attempt to help recycle fluorescent lamps that residents would deliver to DPW yards that we serviced. In an effort to minimize space of the lamps, Advanced Recovery Inc. researched various 'lamp crushers' and came to the conclusion that we may be best suited with the use of a 'Drum Top Crusher' or 'DTC'. After researching, we found the EPA Office of Solid Waste and Emergency Response had created a report specific to DTC units – Mercury Lamp Drum-Top Crusher Study which utilized the machines manufactured by Air Cycle Corporation. We then in-turn researched Air Cycle Corporation and found that there DTC was a good fit for our small operation of the lamp processing.

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After actually putting the DTC into full operational use, we had found that it is not necessarily as 'clean' of a process as advertised when in fact you will occasionally experience a small portion of white dust from the bulb phosphor and small shards of processed glass. It was our practice to continually clean the top of the bulb crusher at the close of each operational day; however during the course of a work day – at certain points of time there was evident shards of glass and dust that were visible and cleaned at the close of each day that the machine was used. Enclosed are pictures of the cleaned & clear top of the bulb crusher and our 'Daily Operational Policy for Crushing Fluorescent Lamps'.

- (b) Storing drums (55 gal) of crushed bulbs in the boiler room annex and the drums were not covered. There were also white dust and broken bulbs lying around the room.

As per our Air Cycle literature and bulb processing policy, all storage drums should be sealed with the appropriate supplied drum lids from Air Cycle. We have subsequently terminated our Operations Manager for the lack of attention to the proper storage requirements. Furthermore, the immediate area in question had been cleaned and the drums securely sealed with the appropriate lids. They have then been collected by Air Cycle for processing and the Bill of Lading is attached.

- (c) Storing 8 broken fluorescent bulbs in one container (box) next to the boiler and 2 broken fluorescent bulbs in the whole unit area.

As per our policy for Proper Handling & Storage of Fluorescent Lamps, all bulbs are to be appropriately stored and labeled to limit the exposure to breakage. We have subsequently terminated our Operations Manager for the lack of attention to the proper storage requirements. Furthermore, the immediate area in question had been cleaned and the broken bulbs had been placed in the sealed drums and collected by Air Cycle for processing. The loose whole bulbs have been placed in appropriate storage boxes as per our internal policy.

- (d) Storing 8 drums (55 gallon) containing crushed fluorescent light bulbs and the top of these containers were covered with shrink wrap plastic film.

The specified drums had the shrink wrap covering removed and were affixed with the appropriate sealing drum lids. The drums were then collected by Air Cycle for processing.

- (e) Generating dust from the cutting of CRT monitors to separate the panel glass from the funnel glass.

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We had cut several CRT units with a diamond blade process to test the viability of running a full scale operation of separating the panel glass from the funnel glass. One issue that we encountered was the dust generation from the cutting. The area that is specified where we cut our sample tubes had been immediately cleaned of any dust and the CRT dust generated was packaged in the appropriate CRT glass Gaylord boxes that we have segregated in the rear warehouse storage room. Subsequently, we are in the process of building a sealed room with proper air flow ventilation and HEPA air filtering system specifically to separate the panel and funnel glass in an isolated environment. We are not currently separating the CRT panel and funnel glass, however we intend to do so in the isolated environment once we complete the processing area room which is projected to be in place by the close of June 2013. We have a policy drafted that will be implemented upon completion of the separating room to protect workers and the work environment; attached is a copy of the draft policy that will be instituted when we resume our cutting process.

2. Pursuant to 6 NYCRR 372.2 § (a)(8)(i)(b), all containers storing hazardous waste must be marked with the words "Hazardous Waste" and other words to identify the contents of the containers.

At the time of the inspection, Advanced Recovery was storing 11 drums of hazardous waste (crushed lamps): 3 in the boiler room annex and 8 in the area next to the boiler room. The containers were not marked with the words "Hazardous Waste" and other words to identify the contents of the containers.

As per internal policy, all products entering our facilities are labeled as "Universal Waste". We neglected to label the drums containing the crushed lamps as "Hazardous Waste", however upon the inspection – we immediately had labeled the drums appropriately as "Hazardous Waste" and the pictures are attached.

3. Pursuant to 6 NYCRR § 372.2 (a)(8)(ii) the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container storing hazardous waste.

At the time of the inspection, Advanced Recovery was storing 11 drums of hazardous waste: 3 in the boiler room annex and 8 in the area next to the boiler room. The containers were not marked with the accumulation start dates.

All incoming materials, as per our internal policy, are to be labeled as 'Universal Waste' along with the date the materials have entered the facility. Our Operations Manager neglected to ensure that incoming materials were being labeled and dated appropriately, and he has subsequently been terminated. All materials entering the facility are labeled as 'Universal Waste' and dated with the accumulation start dates.

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4. Pursuant to 6 NYCRR Part 373-3.9(d)(1), all containers containing hazardous waste must be closed except when waste is being added or removed.

At the time of inspection, Advanced Recovery was storing 11 drums of hazardous waste; 3 in the boiler room annex and 8 in the area next to the boiler room. These containers were not closed.

As per our internal policy with respects to processing the fluorescent lamps, all drums are to be sealed with the appropriate drum lids. Immediately after the inspection, the drums were sealed with the appropriate lids and staged for Air Cycle to arrange pickup.

5. Pursuant to 6 NYCRR § 374-3.2(e)(5), a small quantity handler of universal waste must label each lamp or each container or package containing such lamps with the words "Universal Waste-Lamps" or "Waste Lamps" or "Used Lamps".

At the time of the inspection, Advanced Recovery was:

- (a) Storing 9 unlabeled boxes of spent fluorescent light bulbs next to the bulb crusher.

Immediately after the inspection, any unlabeled boxes of fluorescent bulbs were labeled appropriately as "Universal Waste-Lamps".

- (b) Storing a bundle of 12 spent fluorescent light bulbs in an area next to the boiler room and neither the bulbs nor the bundle was labeled.

Immediately after the inspection, the bundle of light bulbs that were not in boxes had been placed in the appropriate size boxes and labeled as "Universal Waste-Lamps".

- (c) Storing one box of spent fluorescent light bulbs in the CRT storage area and the box was not labeled.

Immediately after the inspection, the bulbs in the CRT storage area were moved to the appropriate staging area with the other boxed bulbs and was labeled as "Universal Waste-Lamps".

- (d) Storing 24 boxes and 1 fiber drum of spent fluorescent light bulbs in the appliance storage area and the boxes and drum were not labeled.

Immediately after the inspection, the bulbs in the appliance storage area were moved to the appropriate bulb staging area. The bulbs in the fiber drum were removed and appropriately boxed and labeled as 'Universal Waste-Lamps'.

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6. Pursuant to 6 NYCRR § 374-3.2 (d)(i), Small Quantity Handlers of Universal Waste must manage spent fluorescent light bulbs in containers or packages that are structurally sound, adequate to prevent breakage and compatible with the contents of the lamps. Containers or packages are closed and show no evidence of leakage, spillage, or damage.

At the time of inspection, Advanced Recovery was:

- (a) Storing spent fluorescent light bulbs in a box next to the boiler and the container was not closed.

Immediately after the inspection, the indicated box next to the boiler room was sealed and moved away from the boiler room area and placed in the lamp staging area.

- (b) Storing spent fluorescent light bulbs in 6 boxes which were not closed.

Immediately after the inspection, the 6 boxes that were indicated as not closed were properly sealed to prevent breakage.

- (c) Storing 12 four foot spent fluorescent light bulbs in the area next to the boiler room and 9 double spent fluorescent light bulbs in the Whole Units area and the bulbs were not stored in containers.

Immediately after the inspection, the bulbs in question had been removed as indicated and placed in the appropriate boxes and labeled "Universal Waste – Lamps".

7. Pursuant to 6 NYCRR § 374-3.2 (d)(ii), Small Quantity Handlers of Universal Waste must make sure that broken lamps are cleaned up and placed in a container. Lamps that show evidence of breakage, spillage or damage are placed in containers. Containers are closed, structurally sound, compatible with the contents of the lamps and lack any evidence of spillage or damage that could cause a leak or release.

At the time of the inspection, Advanced Recovery did not clean up broken fluorescent lamps and place them in appropriate containers in the following areas:

- (a) The boiler room,
(b) The boiler room annex, and
(c) The area next to the bulb crusher.

Immediately concluding the inspection, the above specified areas were each cleaned of any debris that appeared to be remains of broken lamps. It is our internal policy to ensure all broken bulbs or cleaned and properly secured in boxes or the processed

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drums of lamp remains to ensure there is no leak or release of the materials. On any given day that bulbs had been processed the remains of any debris are cleaned at the close of each work day.

8. Pursuant to 6 NYCRR § 374-3.2(e)(1), a small quantity handler of universal waste must label a container in which batteries are stored with the words “Universal Waste – Batteries” or “Waste Batteries” or “Used Batteries”.

At the time of the inspection, Advanced Recovery had a three gallon container accumulating Ni-Cd batteries and the container was not labeled.

Immediately after the inspection, the container holding the batteries that was specified had been labeled as “Universal Waste – Batteries”.

Enclosure II

1. With regards to the violations cited in the above Notice of Violation (Enclosure I), please provide (1) a description of the actions taken to correct the violations cited and provide supporting documentation, including photographs (where applicable), verifying that each violation has been corrected; or (2) a rebuttal of the violations.

Under the above section “Enclosure I”, I have described the actions taken to immediately correct the violations cited. Supporting documentation including company policy documents, photographs, and downstream bill of lading for processed materials are attached.

2. At the time of the inspection, Advanced Recovery was storing eleven 55 gallon drums of crushed spent fluorescent light bulbs. The containers were not labeled and were not properly covered (3 had no covers and 8 were shrink-wrapped). With respect to the 11 drums:

- (a) Did Advanced Recovery make a determination whether the crushed bulbs were a hazardous waste? If yes, when? Please provide a copy of documentation (e.g. copies of analytical data or generator knowledge) used to make the determination.

Upon verification of NYS regulations, it appears under the NYS DEC that all crushed lamps should be treated as hazardous waste and therefore, no special analytical data is necessary for the determination.

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As per 6 NYCRR 373-1.1(d)(1), The crushed lamps are usually considered hazardous waste for mercury, and sometimes for lead, and must be handled and disposed of in accordance with normal hazardous waste requirements.

- (b) Were the drums labeled after a determination was made? If yes, provide supporting documentation.

Upon determination of NYS DEC regulations that the drums should be treated as hazardous waste, the 11 drums were each labeled "Hazardous Waste – Crushed Fluorescent Lamps". Supporting documentation of photographs are attached.

- (c) Did Advanced Recovery mark accumulation start date on the drums? If yes, when were they marked? Provide supporting documentation.

Yes, being that we had just prior recently began using the Air Cycle DTC processing unit, we marked the drums as the date we actually received the Air Cycle DTC which was 5/24/12. Not all bulbs were processed on the specified date, however it was the initial date the DTC was on our site. Supporting documentation of photographs are attached.

- (d) Were these drums transported off-site by a hazardous waste transporter? If yes, provide supporting documentation (e.g. hazardous waste manifests or bills of lading).

Yes, on 8/28/12, Air Cycle arrange for pickup and transport with Northeast Lamp Recycling, Inc. for processing under manifest no. 008951658JJK with reference no. 177601. Supporting documentation of the hazardous waste manifest and bill of lading are attached.

- (e) Were these drums shipped to an authorized Treatment, Storage and / Disposal facility? If yes, provide supporting documentation (e.g. hazardous wastes manifests).

Yes, on 8/28/12, Air Cycle arranged for pickup and transport to an authorized treatment, storage, and disposal facility registered as Northeast Lamp Recycling, Inc. (CT5000001495) for processing under manifest no. 008951658JJK with reference no. 177601. Supporting documentation of the hazardous waste manifest and bill of lading are attached.

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- (f) Were these drums shipped on a hazardous waste manifest? If yes, provide supporting documentation.

Yes, the drums were shipped as indicated above to Northeast Lamp Recycling on a hazardous waste manifest EPA form 8700-22 (Rev. 3-05). Supporting documentation of the hazardous waste manifest is attached.

3. When did Advanced Recovery start crushing spent fluorescent light bulbs? Provide the dates and the weight of bulbs crushed on the dates provided.

Advanced Recovery Inc. received our purchased DTC unit from Air Cycle on 5/24/12. We began using the unit shortly thereafter intermittently as small lots of fluorescents lamps entered our facility. I have attached our log of incoming fluorescent lamps from 1/1 – 7/31/12.

4. At the time of the inspection, a facility representative stated that some light bulbs were collected from household collection events. From observation, households rarely use four foot and eight foot light-bulbs for lighting. Provide documentation that the light - bulbs that Advanced Recovery claimed were collected from households were actually from households. Include copies, if any, of SOPs used to segregate household materials stored, managed and disposed of by Advanced Recovery from other materials.

Advanced Recovery Inc. began accepting fluorescent lamps as an additional service to our residential public works programs and certain household collection events. In our upstate region of New York State, it is not unusual or rare for households to utilize straight fluorescent fixtures in their basements or garages, as many households in upstate NY have both household garages and finished / unfinished basements. The bulk of incoming lamps had been from Sullivan County Public Works transfer stations as a service to the residents. However, being that we cannot literally have an employee stationed at the transfer stations to verify all the lamps that are dropped off are coming from all residents, we have in-turn decided to cancel the program and are no longer accepting bulbs in this fashion. Advanced Recovery Inc. initially thought that it would be in the best interest of the local environment and convenient for residents to have this service available to them; however now that we have witnessed the burden this additional service has placed on our company, it is in our best interest to no longer collect or crush lamps from any residents. We have completely discontinued collecting bulbs at any collection events or from any Public Works yards and transfer stations. There are a few select customers that we will allow to send to us, however we will no longer be crushing any lamps with our Air Cycle machine and it will be sold shortly. I have attached our incoming bulbs report log from 1/1 – 7/31/12.

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5. At the time of inspection, Advanced Recovery was crushing spent fluorescent bulbs and there were shards of glass and white dust accumulating on and around the bulb crusher.

- (a) Has Advanced Recovery changed their Standard Operating Procedure (SOP) with regards to crushing of light-bulbs? Please provide a copy of the SOP in use at the time of the inspection and copies of any revisions.

Advanced Recovery Inc. has changed our SOP with regards to crushing light-bulbs. Our initial policy did in fact have the measures in place for the machine and processing area to be left in clean condition at the close of each work day. Upon utilizing the Air Cycle DTC since 5/24/12, we have found that the machine does not necessary process in as clean of a fashion as it is advertised. Therefore, our policy was in place for the machine to be cleaned at the close of each processing day. Furthermore, we have issued a facility policy that the unit no longer be utilized. We have determined that although we had the best interest of the local community in mind to offer the lamp recycling service, it is not in our best interest as a company to maintain the lamp recycling process in the same manner. I have attached our original operational policy, as well as notice of discontinued use of the machine. We are currently marketing the machine for sale.

- (b) What type of safety equipment is provided to employees crushing the bulbs?

Previously, when it was policy of Advanced Recovery Inc. to crush the light bulbs with the Air Cycle DTC unit, the safety equipment provided included safety glasses, leather-palm work gloves, and 3M NIOSH approved filtering face pieces. I have attached our facility Hazard Assessment form that was in place regarding use of the DTC unit; Although it is current company policy to no longer utilize the lamp crushing machine.

- (c) How many employees are / were involved in the crushing of bulbs?

At the time that the DTC unit was utilized, there were 2 employees involved in the crushing of bulbs. However, no employees are currently crushing any bulbs at Advanced Recovery Inc.

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- (d) What sort of training was provided to the employees? Provide a copy of supporting documentation (e.g. training materials, login sheets, certificates etc.)

*Upon arrival of the Air Cycle DTC unit, two of our employees had been trained via the Air Cycle online training at: <http://www.aircycle.com/resources/bulb-eater-certified-training/uw-video/>
The two individuals were the only employees to utilize the DTC.*

- (e) Are / Were the employees tested for mercury exposure? If yes, were any results found to have been above health based limits? Please provide a summary of the results with the employees' names redacted.

No employees had been tested for mercury exposure. It was determined, based on Air Cycle DTC studies that the mercury exposure for workers is found to be negligible and we therefore did not implement a mercury testing program. I have attached the Air Cycle mercury emissions' sampling and evaluation report generated by GEO-CENTERS, Inc.

- (f) Was any mercury testing performed to determine if OSHA limits were exceeded? If yes, were any OSHA limits exceeded? Please provide a copy of the test results.

No mercury testing was performed to determine if OSHA limits were exceeded. Based on the reports provided by Air Cycle, it was documented that air monitoring samples were determined to be less than the analytical detection limit of 0.00005 mg; whereas OSHA has set the Permissible Exposure Limits at 0.10 mg per cubic meter. This data is found in the above referenced attached GEO-CENTERS, Inc. report on Air Cycle mercury emissions sampling and evaluation.

6. At the time of the inspection, there were a number of CRTs from computer monitors and TVs at the site.

- (a) How many CRT monitors and TVs with tubes do you have on-site and what do you plan to do with these monitors and TVs. Please provide copies of documentation demonstrating ultimate disposal of CRTs, CRT Glass and/or frit.

