UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF:	
Lifestyle Footwear, Inc.	**COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING**
Respondent	
Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6928	Docket No. RCRA-02-2007-7115

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 through 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of EPA's preliminary determination that Lifestyle Footwear, Inc. (hereinafter "Respondent" or "Lifestyle") has violated requirements of RCRA and regulations implementing RCRA, concerning the management of hazardous waste at its facility in Moca, Puerto Rico.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), whereby the Administrator of EPA 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 federal hazardous waste program. The Commonwealth of Puerto Rico is not authorized by EPA to conduct a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for requirements promulgated pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 through 279 relating to hazardous waste are in effect in the Commonwealth of Puerto Rico and EPA has the authority to implement and enforce these regulations.

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."

Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), "[a]ny 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*, increased to $27,500 the maximum penalty EPA might obtain pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) for violations occurring between January 31, 1997 and March 15, 2004 and the maximum penalty to $32,500 for violations occurring after March 15, 2004.

The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, who has been duly delegated the authority to institute this action, hereby alleges:

General Allegations

Jurisdiction

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. §§ 6928(a), and 40 C.F.R. § 22.1(a)(4).

Respondent's background

2. Respondent is Lifestyle Footwear, Inc. (hereinafter "Respondent" or "Lifestyle"), which is a subsidiary of Rocky Brands, Inc., a for-profit corporation organized in accordance with the laws of the State of Delaware. Rocky Brands Inc. currently has manufacturing operations in China, Dominican Republic, Puerto Rico, and the United States.

3. Lifestyle has been engaged in manufacturing in Puerto Rico, since 1989 in the Municipality of Aguadilla. In 1999, Lifestyle consolidated and relocated its manufacturing operations to the Municipality of Moca, and transferred various product lines from its parent company's headquarters in Ohio.

4. Lifestyle manufactures footwear products, including men, woman and children boots, hand-sewn casuals and work shoes for the civilian and military market.

5. Respondent's facility is located at PR Road 125, km. 3.8, Industrial Park, Pueblo Ward in Moca, Puerto Rico (hereinafter the "facility" or "Moca facility"). The property lot is owned by the Puerto Rico Industrial Development Company (PRIDCO), and is identified as T-1236-1-82 and T-1236-0-78.

6. Respondent is a "person" (as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.[1]

7. Since before its consolidation in 1999, Respondent has conducted the manufacturing and distribution of footwear products whose operations include the use of basic and industrial chemicals, chemical intermediates, and solvents, and the preventive maintenance and mechanical services for the shoe production machinery and the transportation fleet which involves among other things, oil changes.

8. The facility is comprised of many areas including those known as:

i) Administrative Main Office Area;
ii) Second (2nd)Administrative Office Area;
iii) Receiving Area (Loading/Unloading Area);
iv) Material Preparation Area;
v) Cutting and Painting Area;
vi) Pressing and Marking Shoe Area;
vii) Sewing and Fitting Area;
viii) Mechanic and Electric Shop Area;
ix) Assembly Area;
x) "Desma" Area (Direct Attach)
xi) Injection Molding Area;
xii) Hazardous Waste Storage Area;

[1] All words or phrases that have been defined in reference to statutory and/or regulatory provisions are used throughout the Complaint as so defined.

xiii) Chemical/Raw Material Warehouse;
xiv) Backyard Area and Parking lot; and,
xv) Old Equipment Storage Area.

9. Respondent's Moca Facility constitutes a "facility," within the meaning of 40 C.F.R. § 260.10.

10. Upon information and belief, Respondent has been and remains the operator of the facility as that term is defined in 40 C.F.R. § 260.10.

Notification of Hazardous Waste Generation

11. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA, through a Notification of Regulated Waste Activity Form under Respondent's name "Lifestyle Footwear, Inc." and dated September 6, 2000 (hereinafter the "Notification") that in the course of carrying out its activities, Respondent generated hazardous waste in and at an operation located on Road 125, km. 3.8, Industrial Park, Pueblo Ward in Moca, Puerto Rico, owned by PRIDCO and having a mailing address of P.O. Box 728, Moca, Puerto Rico 00676.

12. The notification was prepared by an employee and/or agent of Respondent in the course of carrying out his/her employment or duties.

13. In the Notification, Respondent reported itself as generating four listed hazardous wastes described by EPA waste code. In the Notification Respondent indicated it generated less than 100 kg/month of hazardous waste.

14. In response to the Notification, EPA provided Respondent with EPA Identification Number PRR000012096 for the facility referred to in the Notification.

15. The location described in the Notification is the Moca Facility as set forth in paragraph "5" above.

16. In a letter dated December 9, 2006, Respondent notified EPA of "Subsequent Notification and Amendments" indicating that the document was to update information which had changed since the submittal of the Notification described in paragraph 11 above. Attached to the letter was a form entitled "RCRA Subtitle C Site Identification Form" dated December 8, 2006 and signed by Mr. Roger Schultz, General Manager of the facility, in which Respondent indicated that it was a Small Quantity Generator (generating between 100 to 1000 kilograms per calendar month

of non-acute hazardous waste)

Respondent's Generation and Storage of Waste

17. Respondent, in carrying out its manufacturing operations and application of basic and industrial chemicals, chemical intermediates, and solvents, maintenance services, and mechanic services, and in the course of conducting normal maintenance operations, has been generating "solid waste", as that term is defined in 40 C.F.R. § 261.2, in various manufacturing areas, warehouses, maintenance areas, and other areas of the facility.

18. As part of the above manufacturing activities and maintenance operations, pursuant to records provided by Respondent to EPA, Respondent has generated solid waste in various manufacturing areas and other areas of the facility since at least since 2000, and it continues to do so.

19. As part of the above manufacturing activities and maintenance operations, Respondent has generated, in various manufacturing areas, mechanic shops, and other areas of the facility, "hazardous waste," as that term is defined in 40 C.F.R. § 261.3.

20. At all times mentioned in this Complaint and subsequent thereto, Respondent has been a hazardous waste "generator," at its Moca Facility as that term is defined in 40 C.F.R. § 260.10.

21. A generator may accumulate, for a limited period of time, specified small or large quantities of hazardous waste generated on site without obtaining a permit or without having interim status provided it complies with all applicable conditions set forth in 40 C.F.R. § 262.34. For this exemption to apply, a generator must comply with all of these conditions.

22. Since at least the time when it notified EPA that it was a hazardous waste generator, Respondent has been storing hazardous wastes on site for at least 90 days but has not complied with all applicable conditions set forth in 40 C.F.R. § 262.34

23. The Moca Facility constitutes a "new hazardous waste management facility" as that term is defined in 40 C.F.R. § 260.10.

24. The Moca Facility is and has been a "storage" facility for "hazardous waste," as those terms are defined in 40 C.F.R. § 260.10.

25. The Moca Facility never received a "permit" to treat, store or dispose of hazardous waste as that term is defined in 40 C.F.R. § 270.2, and never qualified for interim status as a treatment, storage or disposal facility pursuant to 40 C.F.R. § 270.70.

26. Respondent, at all times mentioned in this Complaint and subsequent thereto, was the operator of a hazardous waste facility that stores hazardous waste in containers as those terms are defined in 40 C.F.R. 260.10.

EPA Investigative Activities

27. On or about March 20, 2006, duly designated representatives of EPA conducted a compliance evaluation inspection under Section 3007 of RCRA, 42 U.S.C. § 6927 (the "Inspection"). The purpose of the inspection was to evaluate Respondent's compliance at the facility with applicable requirements of RCRA and its implementing regulations.

28. On or about March 20, 2006, duly designated representatives of EPA also held at the facility an inspection closing conference with Respondent's representatives.

29. During the closing conference, EPA discussed the preliminary findings of the compliance evaluation inspection.

30. On or about August 25, 2006, EPA sent Respondent, pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, a Notice of Violation ("NOV") and Information Request Letter, regarding its Moca Facility, citing RCRA violations discovered during the Inspection, and requiring the submission of certain information.

31. On or about September 12, 2006, Responded submitted a partial response to the NOV stating that ten out of the fifteen notified violations were being corrected. However, no evidence was provided. In addition, the Respondent requested an extension of time to submit a complete response to the above-mentioned letter. EPA granted a 45-day extension to respond and submit the information requested.

32. On or about December 28, 2006, EPA sent a second letter to notify the Respondent that a complete response to the NOV and

Information Request Letter had to be submitted by no later than January 15, 2007.

33. On or about January 10, 2007, Respondent submitted its response (the "Response"). In the Response, Respondent again stated (see paragraph 16 above for the initial statement) that its generator status is that of a Small Quantity Generator. In addition, Respondent provided copies of manifests which show that numerous hazardous waste, presumably those observed by EPA during the inspection, were shipped off-site on April 12, 2006.

34. The Response was prepared by an employee or agent of Respondent's Moca Facility in the course of carrying out his/her employment or duties. As of the date of issuance of this complaint, Respondent has not responded in full to EPA's information request.

COUNT 1 - Failure to Make Hazardous Waste Determinations

35. Complainant realleges each applicable allegation contained in paragraphs "1" through "34", as if fully set forth herein.

36. Pursuant to 40 C.F.R. § 262.11, a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste using the procedures specified in that provision.

37. Pursuant to 40 C.F.R. § 261.2, subject to certain exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined therein.

38. Pursuant to 40 C.F.R. § 261.2(b), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated."

39. Prior to at least March 20, 2006, Respondent generated at its Moca Facility at least the following waste materials:

    a. Two(2)almost full 5-gallon plastic containers holding solid waste mixed with rags impacted with paint related materials located at the Chemical/Raw Material Warehouse;

b. One wood platform heavily impacted with discarded material/waste and black shoe ink located at the Backyard Area; and,

c. One(1) ½-gallon plastic container (almost half-full) holding an unknown waste located at the Old Equipment Storage Area.

40. Subsequent to March 20, 2006, Respondent discarded or disposed of the waste material identified in paragraph "39", at its Moca Facility, by placing it with the municipal trash.

41. Prior to at least March 20, 2006, Respondent also generated at its Moca Facility at least the following waste materials:

a. Five(5) cardboard boxes holding more than forty(40) spent fluorescent light bulbs stored at the 2nd Floor Administrative Office Area; and,

b. One(1)package of twelve(12)spent fluorescent light bulbs placed on the concrete floor of the 2nd Administrative Floor Office Area.

42. Prior to at least March 20, 2006, Respondent accumulated or stored at its Moca Facility the material identified in paragraph "41" before or in lieu of it being disposed of.

43. Each of the materials identified in paragraphs "39 " and "41" above is a "discarded material" and "solid waste," as defined in 40 C.F.R. § 261.2.

44. As of at least March 20, 2006, Respondent had not determined if the materials identified in paragraphs "39" and "41" constituted hazardous wastes.

45. Respondent's failure to determine whether each solid waste generated at its Moca Facility constitutes a hazardous waste is a violation of 40 C.F.R. § 262.11.

COUNT 2 - Storage of Hazardous Waste Without A Permit

46. Complainant realleges each allegation contained in paragraphs "1" through "34", inclusive, as if fully set forth herein.

Legal Requirements for Permits

47. Pursuant to Section 3005 of the Act, 42 U.S.C. § 6925; 40 C.F.R. § 270.1(c), the owner or operator of a hazardous waste management facility must obtain a permit in order to treat, store or dispose of such waste.

48. To be exempt from having to obtain a permit, a small or large quantity generator storing hazardous waste on site must comply with all applicable provisions of 40 C.F.R. § 262.34.

Storage of hazardous waste

49. At the time of the Inspection, Respondent was storing hazardous waste in containers at its facility, including, but not limited to the Hazardous Waste Storage Area, Cutting and Painting Area, Chemical/Raw Material Warehouse, and Backyard Area. Respondent stored hazardous waste before or in lieu of the waste being disposed of.

50. During at least the period from March 20, 2006 (the date of the Inspection) until April 12, 2006 (the date of the first off-site hazardous waste shipment following the Inspection), Respondent was storing hazardous waste at the facility.

51. Respondent failed to comply with the requirements for storage of hazardous waste as set forth below.

Failure to Comply with Limitation on Time Allowed for Storage

52. Pursuant to 40 C.F.R. 262.34, generators who wish to store hazardous waste under the permit exemption are allowed to store hazardous waste for a limited amount of time.

53. During the inspection, the inspectors observed numerous containers of hazardous waste in which the containers were in a condition of extreme deterioration and neglect and appeared to have been so for an extended period of time.

54. Upon information and belief, Respondent had been storing containers of hazardous waste at the facility for more than 180 days prior to April 12, 2006.

55. The above-described storage was for a period in excess of the allowed time limit for storage of such wastes.

Failure to mark containers with the words "hazardous waste"

56. Pursuant to 40 C.F.R. § 262.34(a)(3)and (d)(4), a generator may accumulate hazardous waste in containers on-site for a

limited time without having to obtain a permit provided that, inter alia, while being accumulated on-site, containers in which hazardous waste are stored at a facility are marked clearly with the words "Hazardous Waste."

57. During at least the period from March 20, 2006 until April 12, 2006, certain containers of hazardous waste which were being stored at the Moca Facility were not labeled with the words "Hazardous Waste" at the facility including, but not limited to the following:

a. One(1)cardboard box filled up with rags impacted with spent solvent waste located at the Hazardous Waste Storage Area;

b. One(1)55-gallon steel container filled up with spent solvent waste placed at the Hazardous Waste Storage Area;

c. One(1)5-gallon steel container filled up with silicone waste located at the Hazardous Waste Storage Area;

d. Three (3)55-gallon polyethylene containers filled up with spent chlorine waste stored at the Chemical/Raw Material Warehouse;

e. One(1) 55-gallon fiber (visibly wet) container filled up with flammable solid waste located at the Backyard Area;

f. Sixty-nine(69)5-gallon plastic/steel containers filled up with discarded hazardous material (ink/glue waste) placed at the Backyard Area;

g. One(1) plastic box (half-full) holding rags impacted with discarded hazardous latex glue located at the Backyard Area;

h. One (1) 55-gallon container holding discarded ink material/waste placed over a wood platform which was heavily impacted with its waste contents of black shoe ink located at the Backyard Area;

i. One(1) cardboard box filled up with discarded hazardous material/waste located at the Backyard Area;

j. Ten(10) 1-gallon steel containers filled up with discarded hazardous material/waste placed at the Backyard Area;

k. One(1) 1-gallon plastic container holding discarded hazardous material/waste located at the Backyard Area; and,

l. One(1) full 55-gallon steel container holding hazardous waste marked with the words "Desperdicios Desma" (Desma Waste)placed at the Backyard Area.

Failure to mark containers with the "accumulation start dates"

58. Pursuant to 40 C.F.R. § 262.34(a)(2) and (d)(4), a generator may accumulate hazardous waste on-site in containers for a limited time without being having to obtain a permit provided that, inter alia, the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

59. During at least the period from March 20, 2006 until April 12, 2006, Respondent failed to have hazardous waste labels with an accumulation start date (*i.e.*, the date when hazardous waste started to be stored in the container) on containers of hazardous waste at the facility including, but not limited to the following:

a. One(1)cardboard box filled up with rags impacted with spent solvent waste located at the Hazardous Waste Storage Area;

b. One(1)55-gallon steel container filled up with spent solvent waste placed at the Hazardous Waste Storage Area;

c. One(1)5-gallon steel container filled up with silicone waste located at the Hazardous Waste Storage Area;

d. Three (3)55-gallon polyethylene containers filled up with spent chlorine waste stored at the Chemical/Raw Material Warehouse;

e. One(1) 55-gallon fiber (visibly wet) container filled up with flammable solid waste located at the Backyard Area;

f. Sixty-nine(69)5-gallon plastic/steel containers filled up with discarded hazardous material (ink/glue waste) placed at the Backyard Area;

g. One(1) plastic box (half-full) holding rags impacted with discarded hazardous latex glue located at the Backyard Area;

h. One (1) 55-gallon container holding discarded ink material/waste placed over a wood platform which was heavily impacted with its waste contents of black shoe ink located at the Backyard Area;

i. One(1) cardboard box filled up with discarded hazardous material/waste located at the Backyard Area;

j. Ten(10) 1-gallon steel containers filled up with discarded hazardous material/waste placed at the Backyard Area;

k. One(1) 1-gallon plastic container holding discarded hazardous material/waste located at the Backyard Area; and,

l. One(1) full 55-gallon steel container holding hazardous waste marked with the words "Desperdicios Desma" (Desma Waste)placed at the Backyard Area.

Failure to Conduct Required Inspections

60. Pursuant to 40 C.F.R. § 262.34(a)(1)(i) and (d)(2), a generator may accumulate hazardous waste on-site in containers on site for a limited time without having to obtain a permit provided that, *inter alia*, the generator complies with the applicable requirements of Subpart I, of 40 C.F.R. Part 265 setting forth requirements for owners and operators of hazardous waste facilities that store containers of hazardous waste.

61. Pursuant to 40 C.F.R. § 264.174 (of subpart I), at least weekly, the owner or operator must inspect areas where containers are stored, looking for leaks and deterioration caused by corrosion or other factors.

62. During at least the period from March 20, 2006 until April 12, 2006, Respondent was not conducting weekly inspections of the areas at the facility in which hazardous waste was being stored, including, but not limited to the following:

    a. Hazardous Waste Storage Area;

    b. Chemical/Raw Material Warehouse; and,

    c. Backyard Storage Area.

Respondent's failure to have required permit

63. During at least the period from March 20, 2006 until April 12, 2006, Respondent failed to meet conditions necessary to accumulate hazardous waste without having obtained a permit or qualifying for interim status.

64. During at least the period from March 20, 2006 until April 12, 2006:

    a. Respondent was storing hazardous waste at the facility without a permit; and

    b. Respondent was operating a hazardous waste storage facility without having obtained a RCRA permit for its facility.

65. Respondent's operation of its facility without having obtained a permit constitutes a violation of Section 3005 of the Act, 42 U.S.C. § 6925; and 40 C.F.R. § 270.1(c).

COUNT 3- Failure to Keep Hazardous Waste Containers Closed

66. Complainant realleges each allegation contained in paragraphs "1" through "34", inclusive, as if fully set forth herein.

67. The owner and operator of a hazardous waste facility that stores hazardous waste in containers must comply with the applicable requirements of subpart I, of 40 C.F.R. Part § 264.

68. Pursuant to 40 C.F.R. § 264.173(a) (of subpart I), containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

69. At the time of the inspection, Respondent was storing hazardous waste in open containers at various locations in

the facility, including, but not limited to the following:

a. One(1) 1/3 open cut 55-gallon plastic container (1/3 full) holding paint waste and paint waste rags placed at a Cutting/Painting Area;

b. One(1) open cardboard box filled up with rags impacted with solvent waste located at the Hazardous Waste Storage Area;

c. One(1) open plastic box (half-full) holding rags impacted with hazardous latex glue located at the Backyard Area;

d. One(1) open 55-gallon container holding discarded material/waste placed over a platform which was impacted with its contents and with black shoe ink located at the Backyard Area; and,

e. One(1) open cardboard box filled up with discarded hazardous material/waste located at the Backyard Area.

70. Upon information and belief, during at least the period from March 20, 2006 until April 12, 2006, Respondent was storing hazardous waste in open containers, when waste was neither being added to nor removed from the containers, at many of the aforementioned (paragraph "69", above) locations.

71. Respondent's failure to keep containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste, constitutes a violation of 40 C.F.R. §264.173(a).

COUNT-4 Storage of Hazardous Waste in Containers in Poor Condition or Leaking

72. Complainant realleges each allegation contained in paragraphs "1" through "34", inclusive, as if fully set forth herein.

73. The owner and operator of a hazardous waste facility that stores hazardous waste in containers must comply with the applicable requirements of subpart I, of 40 C.F.R. Part 264.

74. Pursuant to 40 C.F.R. § 264.171 (of subpart I), if the containers holding hazardous waste are not in good condition or begin to leak, the owner or operator must transfer the hazardous waste to a container that is in good condition or manage the waste in some other way that complies with the

applicable requirements.

75. During at least the period from March 20, 2006 until April 12, 2006, Respondent had been storing hazardous waste in containers that were not in good condition or that were exhibiting leakage, in certain areas of the facility as follows:

    a. One(1) 55-gallon fiber container, visibly wet, filled up with flammable solid waste located at the Backyard Area;

    b. Three(3)out of sixty-nine(69)5-gallon plastic/steel containers, visibly corroded, filled up with discarded hazardous material (ink/glue waste) placed at the Backyard Area;

    c. One(1) cardboard box, visibly broken, filled up with discarded hazardous material/waste located at the Backyard Area; and,

    d. Ten(10) 1-gallon steel containers, visibly rusted, filled up with discarded hazardous material/waste placed at the Backyard Area.

76. Respondent's failure to transfer hazardous wastes from containers not in good condition or exhibiting leakage, to containers in good condition or to otherwise manage the waste in compliance with applicable requirements constitutes a violation of 40 C.F.R. § 264.171.

COUNT 5- Failure to Minimize Risks of a Fire, Explosion, or Release

77. Complainant realleges each allegation contained in paragraphs "1" through "34", inclusive, as if fully set forth herein.

78. The owner and operator of a hazardous waste facility must comply with the applicable requirements of Subpart C in 40 C.F.R. Part 264.

79. Pursuant to 40 C.F.R. § 264.31 (of Subpart C), a facility must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

80. Pursuant to 40 C.F.R. § 264.177(c) a storage container holding a hazardous waste that is incompatible with any waste or other materials stored in other containers, piles, open tanks or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall or other device.

81. During at least the period from March 20, 2006 until April 12, 2006, Respondent was storing hazardous waste in the Backyard Area, which has no roof and is exposed to sun, rain and wind. Even though these containers were placed on concrete, many were in poor condition and exposed ground was approximately 12 feet away and there were stains on the concrete indicating that some of the containers had leaked. The stored materials included reactive wastes placed next to flammable solvent wastes, and other chemicals, including toxins, increasing the risk of fire, explosion, and releases including:

    a. One (1) 55-gallon fiber (paper) container filled up with flammable solid waste located at the Backyard Area, which was in poor condition, visibly wet;

    b. Three (3) out of sixty-nine(69) abandoned 5-gallon steel containers filled up with discarded hazardous material (ink/glue waste) placed at the Backyard Area, in poor condition, visibly corroded; and,

    c. Ten (10) 1-gallon steel containers filled up with discarded hazardous material/waste placed at the Backyard Area, in poor condition, visibly rusted.

82. Respondent's failure to maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment, constitutes a violation of 40 C.F.R. § 264.31.

83. Respondent's failure to keep storage containers holding hazardous waste that is incompatible with other materials stored in containers or piles separated by means of a dike, berm, wall or other device constitutes a violation of 40 C.F.R. § 264.177(c).

COUNT 6 - Failure to Provide Personnel with Hazardous Waste Training

84. Complainant realleges each allegation contained in paragraphs "1" through "34", inclusive, as if fully set forth herein.

85. The owner and operator of a hazardous waste facility must comply with training requirements set forth in 40 C.F.R. § 264.16.

86. Pursuant to 40 C.F.R. § 264.16(a) and (b), personnel must successfully complete an initial program of class room instruction or on job training that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste management regulations. The program must include instruction which teaches facility personnel hazardous waste management procedures relevant to the positions in which they are employed and to be familiar with emergency procedures, equipment and systems ("the initial training program"). Furthermore, the training must be completed within six months after date of employment.

87. Pursuant to 40 C.F.R.§ 264.16(c), facility personnel must take part in an annual review of the initial training program.

88. At the time of the inspection, not all facility personnel responsible for hazardous waste management had completed the initial training program within six months of their employment.

89. At the time of the inspection, not all facility personnel responsible for hazardous waste management had taken part in annual reviews of the initial training program.

90. Respondent's failure to ensure that all of its facility personnel responsible for hazardous waste management had received the required training within six months and/or annual reviews that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste management regulations constitutes a violation of 40 C.F.R. § 264.16.

COUNT 7- Failure To Label Containers with the words "Used Oil"

91. Complainant realleges each allegation contained in paragraphs "1" through "34", inclusive, as if fully set forth herein.

92. Pursuant to 40 C.F.R. § 279.22(c)(1), containers used to store

used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".

93. At the time of the Inspection, Respondent was storing used oil in a 55-gallon drum located in the Chemical/Raw Material Warehouse. Respondent had failed to label or mark the used oil drum with the words "Used Oil."

94. Respondent's failure to have the drum described in paragraph "93" above, labeled with the words "Used Oil",constitutes a violation of 40 C.F.R. § 279.22(c)(1).

PROPOSED CIVIL PENALTY

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, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address:

http: //www. epa.gov/compliance/resources/policies/civil /rcra/rcpp2003-fnl.pdf.

This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint is included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

In view of the above-cited violations, and pursuant to the authority of 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 and any good faith efforts by the Respondent to comply with applicable requirements, the Complainant herewith proposes the assessment of a civil penalty in the total amount of **One Hundred and Forty Thousand and Three Hundred Twenty Eight($140,328)dollars** as follows:

Count 1:	**$ 8,382**
Count 2:	**$ 60,880**
Count 3, 4, and 5:	**$ 57,526**
Count 6:	**$ 8,382**
Count 7:	**$ 5,158**
Total Proposed Penalty:	**$ 140,328**

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to the Respondent, which shall take effect (i.e., the effective date) 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):

1. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent it has not already done so, and to the extent still possible, make the required determinations whether solid wastes previously generated at the Facility are hazardous wastes. Respondent shall comply with 40 C.F.R. § 262.11 for any newly generated solid waste.

2. Respondent shall either:

   a. Submit, within ninety (90)calendar days of the effective date of this Compliance Order, a Part B permit application to the United States Environmental Protection Agency for a hazardous waste permit for its facility and shall comply with all applicable rules and regulations and take steps, including, but not limited to those set out in the paragraphs below, until it obtains such permit;

   or,

   b. Comply with all conditions necessary to be exempt from

hazardous waste permitting requirements at the facility. These conditions (which vary according to the type and quantity of hazardous waste generated and accumulated) include, but are not limited to the applicable regulations in 40 C.F.R. Parts 262 and 265.

3. Within ten (10)calendar days of the effective date of this Compliance Order, Respondent shall:

   i. only use containers that are clearly labeled with the words "Hazardous Waste" and with other words that identify their contents to accumulate and/or store hazardous wastes; and,
   ii. only use containers that are clearly marked with the accumulation start date to accumulate or store hazardous waste.

4. No later than ten (10) calendar days of the effective date of this Compliance Order, if it has not already been doing so, Respondent shall conduct weekly inspections of areas in which hazardous wastes are being stored.

5. Within ten (10)calendar days of the effective date of this Compliance Order, Respondent shall transfer hazardous wastes from any container that is leaking or not in good condition to a container that is in good condition and to maintain all such containers closed unless adding or removing wastes.

6. Within ten (10)calendar days of the effective date of this Compliance Order, Respondent shall, if it has not already done so, take all necessary steps to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous constituents.

7. Within ten (10)calendar days of the effective date of this Compliance Order, Respondent shall, if it has not already done so, separate containers holding hazardous waste from other wastes or materials that are incompatible with such wastes or materials.

8. Within ten (10)calendar days of the effective date of this Compliance Order, to the extent it has not done so, Respondent shall comply with applicable training requirements.

9. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall comply with all

other applicable federal and state regulatory requirements for hazardous waste generators.

10. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall label with the words "Used Oil" all containers and tanks accumulating Used Oil.

11. Regardless of Respondent's decision with regard to the options in paragraph 2 of this Compliance Order, above, respondent shall submit to EPA within forty (40) calendar days of the effective date of this Compliance Order written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements cited in Paragraphs 1 through 10 of this Compliance Order, above. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.

12. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Eduardo R. González, P.E., DEE, MBA
Response & Remediation Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de Leon Avenue
San Juan, Puerto Rico 00907

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or Commonwealth) provisions, nor does such compliance release Respondent from liability for any violations at the Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at the Facility.

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 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 EPA.

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 ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," ("CROP") and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

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 is 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 to the Complaint, and such Answer 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 - Room 1631,
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and the Assistant Regional Counsel mentioned in Section VI. below and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer 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 its

Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

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

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their 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, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (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 its Answer 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 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 to the Complaint, any order issued therefore 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 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, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent 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 Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) 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 its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served." 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.

VI. 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 it believes 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 effect the proposed penalty would have on Respondent's ability to continue in business 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:

Stuart Keith
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
Telephone: (212) 637-3217

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 requesting 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 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 will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its 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's 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's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

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

COMPLAINANT:

DATE: 09-26-07

Carl Axel Peter Soderberg
Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2

To: Mr. Roger Schultz,
General Manager
Lifestyle Footwear, Inc.
P.O. Box 728
Moca, PR 00676

cc: Mr. Julio I. Rodriguez, Director
Land Pollution Regulation Program
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, PR 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

IN THE MATTER OF: **Lifestyle Footwear, Inc.** Respondent Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6928	Complaint, Compliance Order and Notice of Opportunity for Hearing Docket No. RCRA-02-2007-7115

CERTIFICATE OF SERVICE

This is to certify that I have on this day caused to be mailed a copy of the foregoing Complaint bearing docket number RCRA-02-2007-7115 and a copy of the CONSOLIDATED RULES OF PRACTICE which are codified at 40 C.F.R. Part 22, as follows:

Certified Mail/Return Receipt Requested, to:

Mr. Roger Schultz,
General Manager
Lifestyle Footwear, Inc.
P.O. Box 728
Moca, PR 00676

In addition I have sent the Original and a copy of the Complaint by UPS to:

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

Dated: 9/27/07

ORC-CT, San Juan, Puerto Rico