

RCRA-03-2008-0280

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In Re:)	
)	
Material Sciences Corporation)	Docket No. RCRA-03-2008-0280
2200 East Pratt Boulevard)	
Elk Grove Village, IL 60007-5995)	
)	CONSENT AGREEMENT
RESPONDENT)	
)	
120 Enterprise Avenue)	
Morrisville, PA 19067)	
)	
FACILITY)	

I. PRELIMINARY STATEMENT

1. This Consent Agreement ("CA") is entered into by the Director, Waste and Chemicals Management Division, United States Environmental Protection Agency, Region III ("Complainant" or "EPA"), and Material Sciences Corporation ("Material Sciences" or "Respondent"), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, this CA and the attached Final Order ("FO", hereinafter jointly referred to as the "CA/FO") both commence and conclude the above-captioned administrative proceeding against Respondent, brought under Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g), for alleged violations of RCRA at Respondent's facility at 120 Enterprise Avenue, Morrisville, PA 19067 (the "Facility").
2. On January 30, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, Pennsylvania was granted final authorization to administer a state hazardous waste management program ("PaHWR") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§6921-6939e. A revised set of PaHWR was authorized by EPA on September 26, 2000, and became effective on November 27, 2000. A more recent revised set of PaHWR was authorized by EPA on January 20, 2004, and became effective on March 22, 2004. The provisions of the authorized PaHWR currently set forth at 25 Pa. Code Ch. 260a-266a, 266b, and 268a-270a, through such authorization, have become requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

3. The factual allegations and legal conclusions in this CA are based on provisions of the PaHWR in effect at the time of the violations alleged herein. The PaHWR incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 for the November 27, 2000 PaHWR authorization, and in effect on September 25, 2003 for the March 22, 2004 PaHWR authorization. The 2004 authorized PaHWR do not make any changes to the November 27, 2000 PaHWR that are relevant to the violations set forth herein.
4. On November 19, 2007, EPA sent a letter to the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), giving Pennsylvania prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. This CA is entered into by Complainant and Respondent to address the violations alleged in the Findings of Fact, as set forth below.
6. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this CA, as set forth above.
7. For the purposes of this proceeding only, Respondent neither admits nor denies the Findings of Fact contained in this CA, except as provided in Paragraph 6, above.
8. For the purposes of this proceeding only, Respondent neither admits nor denies the Conclusions of Law contained in this CA, except as provided in Paragraph 6, above.
9. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations herein or to appeal the FO attached hereto.
10. The settlement agreed to by the parties in this CA reflects the desire of the parties to resolve this matter without litigation.
11. Respondent consents to the issuance of this CA and to the attached FO and agrees to comply with their terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement thereof.
12. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter. As set forth in Paragraphs 7 and 8, above, Respondent

neither admits nor denies these Findings of Fact and Conclusions of Law, but agrees to this settlement to avoid further litigation, as set forth in Paragraph 10, above.

14. Respondent is, and was at the time of the violations alleged herein, a Delaware corporation and a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and as defined in 25 Pa. Code § 260a.10.
15. Respondent is, and was at the time of the violations alleged herein, the "owner" and "operator," as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, of a facility located at 120 Enterprise Avenue, Morrisville, PA 19067 (the "Facility").
16. On September 19, 2007, representatives from EPA and the Pennsylvania Department of Environmental Protection ("PADEP") conducted an inspection of the Facility (the "September 2007 Inspection"). At the time of the September 2007 Inspection, and at all times relevant to the violations alleged in this CA/FO, Respondent was a "generator" of the "hazardous waste" at the Facility described herein as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference into 25 Pa. Code § 260a.1.
17. At the time of the September 2007 Inspection, and at all times relevant to this CA/FO, Respondent was engaged in the "storage" of the "hazardous waste" at the Facility described herein, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference into 25 Pa. Code § 260a.1 and/or as defined in 25 Pa. Code § 260a.10.
18. Pursuant to 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, "hazardous waste" means "a hazardous waste as defined in [40 C.F.R. § 261.3]."
19. 40 C.F.R. § 261.3(a), as incorporated by reference in 25 Pa. Code § 261a.1, provides, in relevant part:
 - (a) A solid waste, as defined in [40 C.F.R.] § 261.2, is a hazardous waste if:
 - (1) It is not excluded from regulation as a hazardous waste under § 261.4(b); and
 - (2) It meets any of the following criteria:
 - (i) It exhibits any of the characteristics of hazardous waste identified in [40 C.F.R. §§ 261.20-.24]. . . .
 - (ii) It is listed in [40 C.F.R. §§ 261.30-.38]

20. At the September 2007 Inspection, thirty-eight (38) fifty-five gallon drums of unidentified waste were located at the Facility. These drums were tagged with numbers at the inspection and later analyzed by a contractor hired by Respondent.
21. Drums Nos. 1, 2, 3, 4, 11, 26, 27, 28, 29, 30, 31, 36, 37, and 38 were identified as containing listed and characteristic hazardous wastes, including EPA waste codes F019 and D007. Drums Nos. 6, 7, 12, 13, 15, 16, 17, 20, and 21 were identified as containing listed and characteristic hazardous wastes, including EPA waste codes D001, F003, and F005. Drums Nos. 8, 10, 18, and 24 were identified as containing characteristic hazardous wastes, including EPA waste code D001.
22. The wastes identified above in Paragraph 21 are hazardous wastes as that term is defined in 40 C.F.R. § 261.3(a), as incorporated by reference in 25 Pa. Code § 261a.1.

COUNT I

(Operating a TSD without a permit or interim status)

23. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
24. Respondent has never been issued a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference into 25 Pa. Code § 270a.1, for the storage of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference into 25 Pa. Code § 270a.1, at any time.
25. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10, generators of hazardous waste who accumulate hazardous waste on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*:
 - a. Pursuant to 40 C.F.R. § 262.34(a)(2), as incorporated by reference into 25 Pa. Code § 262a.10, the date upon which each period of accumulation begins must be clearly marked and visible for each container; and
 - b. Pursuant to 40 C.F.R. § 262.34(a)(3), as incorporated by reference into 25 Pa. Code § 262a.10, each container and tank must be clearly marked with the words "Hazardous Waste;" and

- C. Pursuant to 40 C.F.R. § 264.34(a)(1)(i), as incorporated by reference into 25 Pa. Code § 262a.10, the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265, which includes the requirement that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. 40 C.F.R. § 265.173(a).
26. At the time of the September 2007 Inspection, Respondent was not in compliance with the conditions for temporary accumulation of hazardous waste by a generator pursuant to 40 C.F.R. § 262.34, as incorporated by reference into 25 Pa. Code § 262a.10, described in Paragraph 25, above, and therefore did not qualify for the exemption from the permitting/interim status requirements provided by such section. The specific reasons why Respondent did not qualify for the exemption include the following:
- a. Respondent stored hazardous waste at the Facility beyond the 90 day period of the exemption provided in 40 C.F.R. § 262.34(a), as incorporated by reference into 25 Pa. Code § 262a.10; and
 - b. Respondent stored hazardous waste at the Facility that was not clearly marked with the start date of accumulation as per the exemption requirement of 40 C.F.R. § 262.34(a)(2), as incorporated by reference into 25 Pa. Code § 262a.10; and
 - c. Respondent stored hazardous waste at the Facility that did not have the words "hazardous waste" on it as per the exemption requirement of 40 C.F.R. § 262.34(a)(3), as incorporated by reference into 25 Pa. Code § 262a.10; and
 - d. Respondent stored hazardous waste at the Facility in containers that were not closed except when adding or removing waste as per the exemption requirement of 40 C.F.R. § 262.34(a)(1)(i), as incorporated by reference into 25 Pa. Code § 262a.10.
27. As of the time of the September 2007 Inspection, Respondent was storing hazardous waste at the Facility without a permit, interim status or valid exemption, in violation of 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

COUNT II
(Failure to make a waste determination)

28. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference into 25 Pa. Code § 262a.10, a person who produces solid waste must determine whether that waste is a hazardous waste.

29. At the time of the September 2007 Inspection, Respondent was storing solid waste in thirty-eight (38) fifty-five gallon containers. At the time of the inspection, Facility representatives could not positively identify the contents of these containers, and had not made a determination as to whether the solid waste contained in the containers was hazardous waste.
30. As of the time of the September 2007 Inspection, Respondent failed to make a waste determination for thirty-eight (38) fifty-five gallon containers of solid waste in violation of 40 C.F.R. § 262.11, as incorporated by reference into 25 Pa. Code § 262a.10.

COUNT III

(Failure to keep containers closed except when adding or removing hazardous waste)

31. Pursuant to 40 C.F.R. § 264.173(a), as incorporated by reference into 25 Pa. Code § 264a.1, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
32. At the time of the September 2007 Inspection, several containers holding hazardous waste at the Facility were not closed during storage. These containers include one fifty-five gallon container located in the old paint room, one Bonderite 902 Hopper located at the waste water treatment side of the manufacturing line, and one F019 Hopper located near the waste water treatment. No waste was being added or removed from these containers at the time of the inspection.
33. Respondent failed to keep containers holding hazardous waste closed except when adding or removing waste in violation of 40 C.F.R. § 264.173(a), as incorporated by reference into 25 Pa. Code § 264a.1.

COUNT IV

(Failure to maintain secondary containment in order to prevent the release of hazardous waste or hazardous constituents to the environment)

34. Pursuant to 40 C.F.R. § 264.193(a), as incorporated by reference into 25 Pa. Code § 264a, secondary containment that meets the requirements of 40 C.F.R. § 264.193 must be maintained for all new and existing tank systems in order to prevent the release of hazardous waste or hazardous constituents to the environment, with exceptions not relevant to this matter.
35. Pursuant to 40 C.F.R. § 264.193(d), as incorporated by reference into 25 Pa. Code § 264a, secondary containment for tanks must include one or more of the following devices:
 - (1) A liner (external to the tank);

- (2) A vault;
 - (3) A double-walled tank; or
 - (4) An equivalent devices as approved by the Regional Administrator.
36. Pursuant to 40 C.F.R. § 264.193(e)(1)(iii), as incorporated by 25 Pa. Code § 264a, external liner secondary containment systems must be free of cracks or gaps.
37. At the time of the September 2007 Inspection, several cracks were present in the secondary containment system of the hazardous waste storage tank located at the Facility.
38. The secondary containment system at the Facility which surrounds the hazardous waste tank is an external liner, as referenced in 40 C.F.R. § 264.193(d), as incorporated into 25 Pa. Code § 264a. No other form of secondary containment authorized by 40 C.F.R. § 264.193(d), as incorporated into 25 Pa. Code § 264a, was being used for such tank at the time of the September 2007 Inspection.
39. Respondent failed to maintain the external liner secondary containment system for its hazardous waste tank in order to prevent the release of hazardous waste or hazardous constituents into the environment in violation of 40 C.F.R. § 264.193(a) and (e)(1)(iii), as incorporated by as incorporated by reference into 25 Pa. Code § 264a.

COUNT V

(Failure to store universal waste lamps in closed containers)

40. Pursuant to 40 C.F.R. § 273.13(d)(1), as incorporated by reference into 25 Pa Code § 266b.1, a small quantity handler of universal waste must contain used lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed.
41. Respondent is a "small quantity handler of universal waste" as that term is defined in 40 C.F.R. § 273.9 and incorporated by reference into 25 Pa Code § 266b.1.
42. At the time of the September 2007 Inspection, several containers storing universal waste "lamps," as that term is defined in 40 C.F.R. § 273.9 and incorporated by reference into 25 Pa Code § 266b.1, at the Facility were not closed.
43. Respondent violated 40 C.F.R. § 273.13(d)(1), as incorporated by reference into 25 Pa Code § 266b.1, by failing to store universal waste lamps in closed containers.

COUNT VI

(Failure to correctly label containers of universal waste lamps)

44. Pursuant to 40 C.F.R. § 273.14(e), as incorporated by reference into 25 Pa Code § 266b.1, a small quantity handler of universal waste must label or mark each container used to store universal waste lamps with one of the following phrases: "Universal Waste - Lamp(s)," "Waste Lamps," or "Used Lamp(s)."
45. At the time of the September 2007 Inspection, several containers storing universal waste lamps at the Facility were not labeled or marked clearly with one of the phrases required by 40 C.F.R. § 273.14(e), as incorporated by reference into 25 Pa Code § 266b.1.
46. Respondent violated 40 C.F.R. § 273.14(e), as incorporated by reference into 25 Pa Code § 266b.1, by failing to correctly label or mark containers of universal waste lamps.

III. CIVIL PENALTIES

47. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this CA, Respondent consents to the assessment of a civil penalty in the amount of **NINETY-NINE THOUSAND EIGHT HUNDRED AND FIFTY DOLLARS (\$99,850.00)**, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct signed copy of this CA/FO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest in connection with such civil penalty as described in this CA/FO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent.
48. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of the violations and good faith efforts of the Respondent to comply, as provided for in Section 3008(a)(3) of RCRA, 42 U.S.C. Section 6928(a)(3).
49. Respondent shall remit payment for the civil penalty set forth in Paragraph 47, above, by certified check or cashier's check, or by electronic funds transfer, in the following manner:
 - A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2008-0280;

- B. All checks shall be made payable to “**United States Treasury**”;
- C. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

- D. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency–Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

- F. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074

Contact: Jesse White 301-887-6548

ABA = 051036706
Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006
CTX Format

G. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

H. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)
800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm

I. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CA/FO. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Brianna Tindall
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

50. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this CA/FO.
51. Pursuant to 31 U.S.C. Section 3717 and 40 C.F.R. Section 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owned to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
52. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a true and correct copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. Section 13.11(a).
53. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. Section 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
54. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. Section 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

VI. OTHER APPLICABLE LAWS

55. Nothing in this CA/FO shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable Federal, State or local laws or regulations.

VII. RESERVATION OF RIGHTS

56. This CA/FO resolves only EPA's claims for civil penalties for the specific violations of RCRA Subtitle C which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including

Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO.

VIII. FULL AND FINAL SATISFACTION

57. Payment of the penalty specified in this CA/FO, above, shall constitute full and final satisfaction of Complainant's claims for civil penalties for the specific violations set forth in the Complaint.

IX. PARTIES BOUND

58. This CA/FO shall apply to and be binding upon EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. By his/her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Agreement on behalf of Respondent and to bind Respondent to the terms and conditions of this CA/FO.

X. EFFECTIVE DATE

59. The effective date of this CA/FO is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk.

XI. ENTIRE AGREEMENT

60. This CA/FO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA/FO.

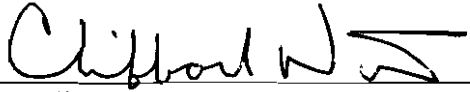
Material Sciences Corporation CA/FO

U.S. EPA Docket Number RCRA-03-2008-0280

For the Respondent:

Material Sciences Corporation

Date: 5-19-08

By: 
Clifford Nastas
Chief Executive Officer

For the Complainant:


U.S. Environmental Protection Agency, Region III

Date: 5-27-08

By: 
Brianna Tindall
Assistant Regional Counsel

The Waste and Chemicals Management Division, United States Environmental Protection Agency - Region III, recommends that the Regional Administrator of the U.S. EPA Region III or his designee issue the accompanying Final Order.

Date: 6/2/08

By: 
Abraham Ferdas, Director
Waste and Chemicals Management Division