

USEPA – Region II
Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of:

Clear View Bag Company, Inc.

Respondent.

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

CONSENT AGREEMENT AND
FINAL ORDER

Docket No. RCRA-02-2020-7103

This is a civil administrative proceeding instituted for injunctive relief and the assessment of civil penalties pursuant to Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, *et seq.* (referred to collectively as “RCRA” or the “Act”) and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits,” (“CROP”) codified at Title 40 Code of Federal Regulations (“C.F.R.”) Part 22.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA’s Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York has been authorized by EPA to conduct a hazardous waste program (“authorized state program”).

The State of New York received final authorization by EPA to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA. See 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005) and 74 Fed. Reg. 31380 (July 1, 2009) and 78 Fed. Reg. 15299 (March 11, 2013). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005. New York’s regulations can be found in Title 6 of the New York Codes, Rules, and Regulations (“6 NYCRR”) Parts 370, 371, 372, 374, and 376. Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized state program, and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

The Complainant and Clear View Bag Company, Inc. (“Clear View” or “Respondent”) agree, by entering into this Consent Agreement and Final Order (“CA/FO”), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the RCRA

violations described herein without litigation. The Findings of Fact and Conclusions of Law set forth below, which pertain to times relevant to this proceeding, are not intended, nor are they to be construed, as Respondent either admitting or denying such findings and conclusions. No adjudicated findings of fact or conclusions of law have been made.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New York notice of this action.

Respondent

2. Respondent is Clear View Bag Company, Inc., a for-profit corporation organized pursuant to the laws of the State of New York in 1961.
3. Respondent manufactures and has primarily manufactured plastic bags and coated paper sheets by printing on roll stocks of polyethylene and polypropylene and then folding and cutting them into the finished products at a facility located at 5 Burdick Drive, Albany, New York 12211.
4. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in 6 NYCRR § 370.2(b).

RCRA and Applicable Hazardous Waste Regulations

5. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste and used oil. 42 U.S.C. § 6901 *et seq.*
6. Pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), the Administrator of EPA has promulgated regulations for the management of hazardous waste including standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 279.
7. Respondent is and has been the "owner" and/or "operator" of the "facility" located at 5 Burdick Drive, in Albany, New York (the "Facility") as those terms are defined in 40 C.F.R. § 260.10, and in 6 NYCRR § 370.2(b).
8. On January 29, 1998, Respondent notified EPA that the Facility was a small quantity generator (SQG). Respondent's notification was made pursuant to Section 3010 of RCRA.

9. In response to the notification referenced above, EPA issued Respondent's Facility EPA Identification Number NY0001427400.
10. Respondent is and has been a "generator" of "hazardous waste" at the Facility as those terms are defined in 40 C.F.R. § 260.10, and in 6 NYCRR §§ 370.2(b) and 372.2(a)(8)(ii).
11. The requirements for generators are set forth in 40 C.F.R. Part 262, and in 6 NYCRR § 372.2.
12. Respondent stores hazardous waste in an outdoor container storage area at its Facility for a finite period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere.
13. Respondent's Facility has been a "storage" facility as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
14. On or about February 2017, the Respondent was storing organic solvent-based inks (propanol/propyl acetate) at the Facility, which the Respondent could no longer use, nor could other printing companies effectively use these waste inks because the ink formulations are specifically tailored to individual machines.

EPA's Investigative and Enforcement Activities Related to this Settlement

15. On or about November 1, 2018, duly designated representatives of EPA conducted an Inspection of Respondent's Facility to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations, including New York's authorized hazardous waste regulations (the "Inspection"). The Inspection was conducted pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.
16. On or about November 29, 2018, EPA sent Respondent a letter requesting information and transmitting a copy of the Inspection Report, which included summaries of EPA's findings. EPA requested that Clear View submit a response to EPA regarding those findings.
17. On or about January 2, 2019, Clear View submitted its response to EPA ("Response").

Storage of Hazardous Waste Without a Permit

18. Pursuant to each of the following provisions, the owner or operator of any facility used for the treatment, storage or disposal of hazardous waste must first obtain a permit or qualify for interim status in order to treat, store or dispose of such waste:
 - a. Section 3005 of the Act, 42 U.S.C. § 6925 provides that owners and operators of

facilities for the treatment, storage, or disposal of hazardous waste must have a permit issued pursuant to this section and prohibits the treatment, storage, and disposal of hazardous waste except in accordance with such a permit; and

- b. 6 NYCRR § 373-1.2, provides that no person shall operate a hazardous waste management facility without a permit issued pursuant to this Part or without interim status pursuant to this Part.
19. On or about February 2017, Respondent generated greater than 1000 kilograms (“kg”) of non-acute hazardous waste at its Facility in a calendar month and was considered a “Large Quantity Generator” (“LQG”) of hazardous waste.
20. The requirements for generators are set forth in 6 NYCRR § 372.2. A LQG may accumulate hazardous waste on-site for ninety (90) days or less without having a permit or interim status provided it complies with *all* applicable conditions set forth in 6 NYCRR § 372.2(a)(8), including, but not limited to, 6 NYCRR § 372.2(a)(8)(i)-(ii).
21. Pursuant to 6 NYCRR § 373-1.1(d)(1)(iii)(c), LQGs that store in containers hazardous waste that is generated onsite, for a period not exceeding 90 days, must comply with 6 NYCRR §§ 372.2(a)(5)-(6); 373-3.2; 373-3.3; 373-3.4; 373-3.7(b) and (e), 373-3.9, 373-3.27 through 373-3.29 and 376.1(g)(1)(v); and among other requirements must clearly mark and make visible for inspection on each container the date on which each period of accumulation begins; must identify all areas and containers used to accumulate hazardous waste with a label or sign stating "Hazardous Waste" and must mark the hazardous waste containers with other words to identify their contents
22. At the time of the Inspection, the facility representative told the EPA Inspectors that on or about February 2017, 75,000 to 80,000 pounds of organic solvent-based inks (propanol/propyl acetate) in storage at the facility at that time had become hazardous waste due to a switch to aqueous solvents to meet State VOC limits and that Clear View had begun manifesting these hazardous waste inks off-site in approximately 2,000 lb monthly increments.
23. At the time of the Inspection, EPA representatives found hazardous waste inks in the facility’s ink storage room, more than 90 days after the inks became a waste.
24. In its Response to EPA’s Inspection report, the Respondent confirmed that as of February 15, 2017 it was only permitted by the New York State Department of Environmental Conservation (NYSDEC) for water-based inks. At that time, all the organic solvent-based inks in storage became D001 hazardous waste.
25. In its Response to EPA’s Inspection Report, the Respondent informed EPA that on

November 13, 2018, Crystal Clean removed the remaining 11,570 pounds of waste ink from the facility and the Respondent provided EPA with the relevant hazardous waste manifest and a photo of the empty ink storage room as attachments.

26. The Respondent had stored 11,570 lbs of hazardous waste inks at the Facility for 636 days without a hazardous waste storage permit.
27. At the time of the Inspection, and at times prior thereto, Respondent failed to meet the conditions necessary to accumulate hazardous waste without having obtained a permit or qualifying for interim status as proscribed by 6 N.Y.C.R.R. § 373-1.2.
28. Respondent was subject to the permit requirements of Section 3005 of the Act, 42 U.S.C. § 6925 and 6 N.Y.C.R.R. § 373-1.2.
29. Respondent's operation of an existing hazardous waste management facility, without having obtained a permit or qualifying for interim status constitutes a violation of Section 3005 of the Act, 42 U.S.C. § 6925; and 6 N.Y.C.R.R. § 373-1.2.

Failure to Submit Annual Report to New York State

30. Pursuant to 6 NYCRR § 372.2(c)(2), a LQG who ships any hazardous waste offsite to a treatment, storage or disposal facility (TSDF) located within the United States must submit annual reports on forms specified by the commissioner of the New York State Department of Environmental Conservation ("NYSDEC"). This report must be submitted to the NYSDEC no later than March 1st and provide information for the preceding calendar year.
31. Pursuant to Parts 372.2(c)(1)(ii), a generator must keep a copy of each annual report for a period of at least three (3) years from the due date of the report.
32. At the time of the Inspection, EPA representatives found no copy of an annual report for calendar year 2017 in the Facility's files, which was required to be submitted to the NYSDEC by March 1, 2018.
33. In its Response to EPA's Inspection Report, the Respondent stated that the above compliance concern at the time of the Inspection was valid but informed EPA that upon removal of all the solvent-based waste ink by Crystal Clean on November 13, 2018 the facility was no longer a generator of hazardous waste.
34. Respondent's failure to submit an annual report to the NYSDEC by March 1, 2018 constitutes a violation of 6 NYCRR § 372.2(c)(2).

CONSENT AGREEMENT

Pursuant to Section 22.13(b) of the Consolidated Rules of Practice , where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3) of the CROP. The Complainant and the Respondent agree that settlement of this matter by entering into this CA/FO is an appropriate means of resolving this case without further litigation. It is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent that it: (a) admits the jurisdictional basis for EPA prosecuting this case; (b) neither admits nor denies, the above EPA Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order (“CA/FO”) shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the “effective date”).

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent, to the extent it has not done so, shall:
 - a. Immediately remove any hazardous waste being stored at the Facility more than 90 days;
2. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall, to the extent that it has not done so, submit an annual report to the NYSDEC for calendar year 2017.
3. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall comply with applicable federal and state regulatory requirements for hazardous waste generators, including conditions required to be satisfied if any hazardous waste generated at the Facility is accumulated onsite for short periods of time without a RCRA hazardous waste permit having been obtained.
4. 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" and "2" 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.

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

Ronald Lockwood
Enforcement Officer
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
lockwood.ronald@epa.gov

and

Melva J. Hayden, Esquire
Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency – Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
hayden.melva@epa.gov

EPA shall e-mail any written communication related to this matter to Respondent at the following email address:

William Todd Romer
President
Clear View Bag Co., Inc.
PO Box 11160
5 Burdick Drive
Albany, New York 12211
toddromer@clearviewbag.com

6. Respondent shall pay a civil penalty to EPA in the amount of **thirty thousand dollars (\$30,000)**. Such payment shall be made by cashier's check, certified check or by electronic fund transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: **In re Clear View Bag Company, Inc., Docket Number RCRA 02-2020-7103.**

Alternatively, if Respondent chooses to make the payment by EFT, Respondent shall then provide the following information to its remitter bank:

- a. Amount of Payment
 - b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
 - c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
 - d. Federal Reserve Bank of New York ABA routing number: **021030004**
 - e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
 - f. Name of Respondent: **Clear View Bag Company, Inc.**
 - g. Case docket number: **RCRA-02-2020-7103**
7. The payment must be received at the above address (or account of EPA) on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO.
8. Payment instructions:
- a. Payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payment by cashier's check or certified check, such check shall be *received* at the above-listed address on or before the time period specified in Paragraph 6. If Respondent makes payments by the EFT method, such EFT shall be *received* on or before the time period specified in Paragraph 6.
 - b. Whether Respondent makes payment by cashier's check, certified check or by the EFT method, Respondent shall, promptly when payment has been made, furnish reasonable proof that the required payment has been made, and such proof shall be furnished to the EPA individuals identified above in Paragraph 5.

- c. Failure to pay the specified amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - d. Furthermore, if the required payment is not received on or before the date when such payment is due under the terms of this document, interest therefore shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date such payment was to have been made through the date such payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date any such payment was to have been received, in which payment of the amount(s) remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which such payment was required hereto to have been made.
9. The civil penalty provided for in this section constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
 10. Complainant shall e-mail to Respondent (to the representative designated below) a copy of the fully executed Consent Agreement and accompanying executed Final Order. Respondent consents to service of the CA/FO by email and consents to service upon such representative by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2:

William Todd Romer
President
Clear View Bag Co., Inc.
PO Box 11160
5 Burdick Drive
Albany, New York 12211
toddromer@clearviewbag.com
 11. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement. Respondent further consents to making payment of the entire amount of the civil penalty in accordance with the terms and schedule set forth above.
 12. This CA/FO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all provisions of RCRA and the regulations promulgated

thereto including New York's authorized hazardous waste program, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.

13. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted in connection with this proceeding.
14. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the RCRA violations described in the above EPA Findings of Fact and Conclusions of Law upon Respondent making full payment of the penalty amount set forth above. Full payment of the penalty described in paragraph # 6, above, shall only resolve Respondent's liability for federal civil penalties for the violation(s) described in EPA's Findings of Fact and Conclusions of Law in this Consent Agreement. Full payment of this penalty shall not in any case affect the right of EPA or the United States, on behalf of EPA, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
15. Respondent waives its right to request a hearing on this Consent Agreement, or the Final Order included herein, including any right to contest any of EPA's Findings of Fact and Conclusions of Law contained within this document.
16. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action, suit or proceeding brought by the United States on behalf of EPA to: (a) enforce this Consent Agreement and Final Order; or b) enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order.
17. Respondent waives any right it might possess to seek or obtain judicial review of the Final Order incorporating this Consent Agreement pursuant to Section 10(c) of the Administrative Procedure Act, 5 U.S.C. § 704, and/or under any other applicable law.
18. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

19. Each party shall bear its own costs and fees in connection with this proceeding.
20. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement; and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
21. EPA and Respondent agree that the parties may use electronic signatures for this matter.

**In the Matter of Clear View Bag Company, Inc.
Docket Number RCRA-02-2020-7103**

RESPONDENT:

BY: William Todd Romer Digitally signed by William Todd Romer
Date: 2020.09.16 12:58:44 -04'00'
(Signature)

NAME: William Todd Romer
(Please Print)

TITLE: President

DATE: 9/16/2020

COMPLAINANT

KATHLEEN ANDERSON Digitally signed by KATHLEEN ANDERSON
Date: 2020.09.17 10:17:36 -04'00'

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

DATE: _____

**In the Matter of Clear View Bag Company, Inc.
Docket Number RCRA-02-2020-7103**

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Clear View Bag Company, Inc.*, bearing Docket Number RCRA-02-2020-7103. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of Section 3008 of RCRA and 40 C.F.R. § 22.18.

HELEN FERRARA

Digitally signed by HELEN
FERRARA
Date: 2020.09.17 15:56:09 -04'00'

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

DATE: 9/17/2020

**In the Matter of Clear View Bag Company, Inc.
Docket Number RCRA-02-2020-7103**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy by EMAIL:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
maples.karen@epa.gov

Copy by EMAIL:

William Todd Romer
President
Clear View Bag Co., Inc.
PO Box 11160
5 Burdick Drive
Albany, New York 12211
toddromer@clearviewbag.com

and

Thomas D. Spain, Esq.
The Spain Law Firm, LLC
22 First Street
Troy, NY 12180
tspain@spainlawpllc.com

Dated: 9/18/2020, 2020

Lynanne B. Hunt Digitally signed by Lynanne B. Hunt
Date: 2020.09.18 14:18:22 -0400