



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 MAR 20 A 8:25  
REGIONAL HEARING  
CLERK

MAR 19 2013

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John G. Valeri Jr.  
Wolff & Samson PC  
One Boland Drive  
West Orange, NJ 07052

Re: **In the Matter of New Jersey Turnpike Authority**  
**Docket Number RCRA-02-2012-7109**

Dear Mr. Valeri:

Enclosed please find two fully executed duplicate original Orders. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl R. Howard".

Carl R. Howard  
Assistant Regional Counsel

cc: Michael Hastry - NJDEP

Enc.

Bcc: Hanna Maciejko (2DEPP-RPB)  
John J. Martin, (PAD-POB)  
George Meyer, (2DECA-RCB)  
William Sawyer, (2ORC-WTS)  
Carl Howard, (2ORC-WTS)  
Lenny Grossman, (2DECA-RCB)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. 11  
2013 MAR 20 A 8:25  
REGIONAL HEARINGS  
REGIONAL CLERK

In The Matter of:  New Jersey Turnpike Authority,  Respondent,  Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.	<b>CONSENT AGREEMENT AND FINAL ORDER</b>  Docket No.: <b>RCRA-02-2012-7109</b>
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**PRELIMINARY STATEMENT**

This civil administrative proceeding was 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, 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding. The Respondent is New Jersey Turnpike Authority ("NJTA" or "Respondent").

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program (the "authorized State Program"). 64 Fed. Reg. 41823 (August 2, 1999). There were later changes in the scope of the authorized State Program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (December 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some minor modifications, the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270, as set forth in the 1993 edition. As of February 14, 2003, the authorized State Program, with some minor modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey's authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (October 21, 1996). The regulations authorized in 2003 can be found at 31 N.J.R. 166 (January 19, 1999). New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA is authorized to enforce the provisions of the authorized State program and retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on September 25, 2012. The Complaint alleged that Respondent failed to comply with RCRA and federally authorized New Jersey hazardous waste regulations by failing to make hazardous waste determinations regarding its solid waste generation. Complainant and Respondent conducted settlement negotiations which led to this agreement.

Complainant and 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 this case without further litigation.

### **EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Respondent**

1. Respondent is the New Jersey Turnpike Authority.
2. Respondent is a governmental entity created by an Act of the New Jersey State Legislature in 1948 for the purpose of constructing, maintaining, repairing, and operating the New Jersey Turnpike. In May 2003, the New Jersey Turnpike Authority Act was amended to consolidate the management and operation of both the New Jersey Turnpike and the Garden State Parkway under the control of the NJTA.
3. Respondent operates the New Jersey Turnpike, a 148 mile public highway, and the Garden State Parkway, a 173 mile public highway. Both the New Jersey Turnpike and Garden State Parkway are toll roads, with combined toll revenues of approximately \$650 million per year.
4. Respondent is a "person," as that term is defined in § 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)).

#### **Respondent's Regulatory Status**

5. On or about December 11, 1980, Respondent notified the EPA that it conducted activities involving the generation of hazardous waste.
6. In response to the Notification described immediately above, EPA provided Respondent, pursuant to 40 C.F.R. § 262.11, with EPA identification number NJD991290925.
7. Respondent subsequently notified EPA of hazardous waste activities at multiple locations along the New Jersey Turnpike and Garden State Parkway, and was provided by EPA with at least forty-four additional EPA identification numbers.

### **Respondent's Generation of Hazardous Waste**

8. At all times mentioned below, Respondent has been a "generator" of "hazardous waste" as those terms are defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)) at multiple locations along the New Jersey Turnpike and Garden State Parkway.

9. The hazardous wastes generated by Respondent have included, without limitation, spent fluorescent, mercury vapor, and sodium vapor lamps, which can be characteristic hazardous wastes as defined within 40 C.F.R. § 261 Subpart C (1993)(N.J.A.C. 7:26G-5.1(a)).

### **EPA Inspection**

10. On or about January 4, 2011, an authorized representative of EPA conducted a compliance evaluation inspection at Respondent's Woodbridge, New Jersey office building, Respondent's Milltown, New Jersey "District 4" maintenance yard, and Respondent's Woodbridge, New Jersey "District 5A" maintenance yard.

### **Information Requests and Responses**

11. By letter dated February 7, 2011, Respondent provided EPA information and documentation regarding Respondent's handling of hazardous waste lamps (the "February 2011 Letter").

12. On or about December 2, 2011, EPA issued to Respondent a Request for Information (the "2011 Information Request") pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, which sought, in part, information and documentation relating to Respondent's handling of hazardous waste lamps.

13. On or about March 22, 2012, Respondent submitted its response to the 2011 Information Request (the "March 2012 Response").

14. On or about June 8, 2012, EPA issued to Respondent a Notice of Incomplete Response and Second RCRA § 3007 Information Request (the "2012 Information Request") pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, which notified Respondent that it had not fully answered the 2011 Information Request and sought further information and documentation relating to Respondent's handling of hazardous waste lamps.

15. On or about July 13, 2012, Respondent submitted its response to the 2012 Information Request (the "July 2012 Response").

16. In its February 2011 Letter, Respondent stated that it was "... hereby transmitting documentation relative to the Turnpike Authority's disposal of luminaires for the three (3) year period of 2008 thru 2010...providing a list of the luminaire purchases made by the Authority during the subject three (3) year period on the basis that these purchases represent the quantity and type of fixtures disposed of by the Authority during this same three (3) year period..." and that "...The Authority was not aware of any specific disposal requirements relative to roadway

*luminaires prior to our January 4, 2011, meeting...*” (emphasis added). The lists provided by Respondent revealed that “*...Lamp usage for 2008 through 2010 for Turnpike...*” totaled “21261” lamps and “*Parkway...Purchased in 2008 2009 2010...*” totaled “6753” lamps (emphasis added).

17. In its July 2012 Response, Respondent stated, with respect to spent lamps managed during the period 2008 through 2010, that “*...the Authority did not determine whether the spent lamps were hazardous waste...*” and stated, with respect to spent lamp disposal, that “*...the spent lamps were placed in solid waste containers as solid waste...*”

18. Pursuant to 40 C.F.R. § 262.11(1993)(N.J.A.C. 7:26G-6.1(a)), a person who generates a solid waste must determine whether that solid waste is a hazardous waste, using the procedures specified in that provision (hereinafter a “hazardous waste determination”).

19. During the period 2008 through 2010, Respondent had taken out of service with the intent of disposal spent fluorescent, mercury vapor, and sodium vapor lamps, which had previously been used to illuminate the New Jersey Turnpike and Garden State Parkway.

20. When intended for disposal, spent fluorescent, mercury vapor, and sodium vapor lamps are solid wastes.

21. At various times during the period 2008 through 2010, Respondent had not determined, and did not have a third-party determine on its behalf, whether its spent fluorescent, mercury vapor, and sodium vapor lamps were hazardous wastes.

22. Respondent’s failure to have made, or to have a third-party make on its behalf, a hazardous waste determination for its spent fluorescent, mercury vapor, and sodium vapor lamps constitutes a violation of 40 C.F.R. § 262.11(1993)(N.J.A.C. 7:26G-6.1(a)).

### **CONSENT AGREEMENT**

Pursuant to Section 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties and Respondent knowingly and voluntarily agrees as follows:

1. The Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order come into compliance and shall thereafter maintain such compliance with 40 C.F.R. Section 262.11(1993)(N.J.A.C. 7:26G-6.1(a)) or in later authorized versions of those regulations.

2. Respondent shall pay a civil penalty to EPA in the total amount of twenty-one thousand two hundred and fifty dollars (\$21,250). Such payment shall be made by cashier’s or certified checks or by Electronic Fund Transfers (“EFT”). If the payments are made by checks, then the

checks 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, MO 63197-9000

Each check shall be identified with a notation thereon: **In the Matter of New Jersey Turnpike Authority** and shall bear thereon the Docket Number: **RCRA-02-2012-7109**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
- 6) Name of Respondent: **New Jersey Turnpike Authority**
- 7) Case Number: **RCRA-02-2012-7109**.

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Carl R. Howard  
Assistant Regional Counsel  
U.S. Environmental Protection Agency-Region 2  
290 Broadway, 16th Floor  
New York, New York 10007-1866

and

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

Payment must be received on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO. The date by which payment must be received shall hereinafter be referred to as the "Due Date."

- a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Further, if the payment is not received on or before the Due Date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the Due Date.
- c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f). Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.

3. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

4. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.

5. Respondent waives its right to request a hearing on the Complaint, this Consent Agreement, or the Final Order included herein, including any right to contest any allegations or EPA's Findings of Fact and Conclusions of Law contained within these documents.

6. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

7. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.

8. Compliance with the provisions of this Consent Agreement does not waive, extinguish or



otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violation at its 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. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies specific factual allegations contained in the Complaint.

9. Each party shall bear its own costs and fees in this matter.

10. The representative of Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.


11. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

12. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT:


New Jersey Turnpike Authority



BY:   
NAME: Veronique Hakim  
TITLE: Executive Director  
DATE: 3/7/13

COMPLAINANT:

United States Environmental Protection Agency - Region 2

BY:   
NAME: Dore LaPosta  
TITLE: Director, Division of Enforcement & Compliance Assistance  
DATE: 3/15/13

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.



**Helen S. Ferrara**  
**Regional Judicial Officer**  
**EPA-Region 2**

DATE: March 19, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on the     MAR 19 2013     I caused a copy of the Consent Agreement and Final Order entered in In the Matter of: **New Jersey Turnpike Authority** Docket No.: RCRA-02-2012-7109 to be sent to the following persons in the manner indicated:

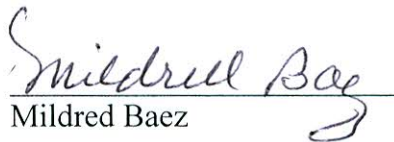
**By United States First Class Mail:**

John G. Valeri Jr., Esq.  
Wolf & Samson PC  
One Boland Drive  
West Orange, New Jersey 07052

**By Hand Delivery:**

Karen Maples  
Regional Hearing Clerk  
U.S. EPA – Region 2  
290 Broadway, 16th Floor  
New York, New York 10007

Date:     MAR 19 2013    

  
Mildred Baez