



MAR 20 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

Elizabeth Rogak, Esq.
Law Department
The Port Authority of New York and New Jersey
225 Park Avenue South, 13th Floor
New York, NY 10003

Re: **In the Matter of The Port Authority of New York and New Jersey**
Docket No. RCRA-02-2011-7110

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 MAR 21 A 10:35
REGIONAL HEARING
CLERK

Dear Ms. Rogak:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency.

Please arrange for payment of this penalty according to the instructions given in the Order.

Sincerely yours,

Stuart N. Keith
Assistant Regional Counsel
Waste & Toxic Substances Branch
Office of Regional Counsel

Enclosures

Cc: Russ Brauksieck, Chief
Facility Compliance Section
NYSDEC
625 Broadway -11th floor
Albany, NY 12233-7251

Michael Hastry, Chief
Bureau of Hazardous Waste Compliance and Enforcement
New Jersey DEP
300 Horizon Center
Trenton, NJ 08625-0407

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

The Port Authority of New York and
New Jersey

Respondent.

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

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. RCRA-02-2011-7110

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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PRELIMINARY STATEMENT

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 United States Code (U.S.C.) §§ 6901-6991 (referred to collectively as the "Act" or "RCRA").

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the authorized regulations comprising the State programs. The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2 ("EPA"), has been duly delegated the authority to institute this action. Complainant issued a "Complaint and Notice of Opportunity for Hearing" to The Port Authority of New York and New Jersey ("Respondent") on September 29, 2011, bearing the docket number listed above. The Complaint alleged that Respondent had violated various federally authorized state regulations concerning the management of hazardous waste.

The parties have reached an amicable resolution of this matter and have agreed to this Consent Agreement and Final Order as a resolution of this proceeding without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This administrative 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).

2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the States of New York and New Jersey prior notice of this action.
3. Respondent, the Port Authority of New York and New Jersey ("PANYNJ" or "Respondent"), operates "facilities" in New York and New Jersey. Specifically, PANYNJ operates the Lincoln Tunnel at 39th Street and 11th Avenues in New York, New York; the Port Authority Bus Terminal ("Bus Terminal") at 825 8th Avenue in New York, New York; the Port Authority Technical Center ("PATC") at 241 Erie Street in Jersey City, New Jersey; and the Newark Liberty International Airport (aka "EWR") in Newark, New Jersey (the "Facilities").
4. Respondent conceives, builds, operates and maintains infrastructure in the New York/New Jersey region's trade and transportation network. These facilities include America's busiest airport system, marine terminals and ports, the PATH rail transit system, six tunnels and bridges between New York and New Jersey, the Bus Terminal in Manhattan, and the World Trade Center site.
5. Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), in Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b)), and 40 C.F.R. § 260.10, as incorporated by reference by the New Jersey Administrative Code ("NJAC") 7:26G-4.1(a).
6. Respondent has been and remains the "owner" of more than one "facility" as those terms are defined in 6 NYCRR § 370.2(b) and 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
7. Respondent has been and remains the "operator", as that term is defined in 6 NYCRR § 370.2(b) and 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a), of the Facilities as described in paragraph 3 above.
8. Respondent currently generates and has been generating "solid waste," as defined in 6 NYCRR 370.2(b) and 40 C.F.R. § 260.10; as incorporated by reference by NJAC 7:26G-4.1(a).
9. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA by a notification, dated April 1986, that it was a large quantity generator of hazardous waste at its Lincoln Tunnel New York Facility. EPA issued Respondent an EPA Identification Number NYD981483332 for that Facility.
10. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA by a notification, dated August 1992, that it was a large quantity generator of hazardous waste at its Bus Terminal Facility. EPA issued Respondent an EPA Identification Number NYD987012689 for that Facility.

11. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA by a notification, dated November 1986, that it was a large quantity generator of hazardous waste at its Technical Center Facility. EPA issued Respondent an EPA Identification Number NJD060792918 for that Facility.
12. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA by a notification, dated August 1982, that it was a large quantity generator of hazardous waste at its Newark Liberty International Airport Facility. EPA issued Respondent an EPA Identification Number NJD980648497 for that Facility.
13. Respondent is a “generator” of “hazardous waste,” as those terms are defined in 6 NYCRR § 370.2(b), § 371.1(d), and 40 C.F.R. § 260.10, as incorporated by reference by NJAC 7:26G-4.1(a).
14. The requirements for generators of hazardous waste are set forth in 6 NYCRR Part 372 and 40 C.F.R. Part 262, as incorporated by reference in NJAC 7:26G-6.1(a).
15. On or about September 10, 2009 and October 7, 2010, a duly designated EPA representative (“Inspector”) conducted two separate inspections of the Lincoln Tunnel New York Facility including related buildings referred to as the “Land Building”, the “River Building” and the “Vent Building South” (“Lincoln Tunnel NY Inspections”) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations, including New York State’s authorized hazardous waste regulations.
16. On or about October 28, 2010, a duly designated EPA representative (“Inspector”) conducted an inspection of the Bus Terminal Facility (“Bus Terminal Inspection”) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations, including New York State’s authorized hazardous waste regulations.
17. On or about October 27, 2010, a duly designated EPA representative (“Inspector”) conducted an inspection of the Port Authority Technical Center Facility (“PATC Inspection”) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey’s authorized hazardous waste regulations.
18. On or about November 16, 2010, a duly designated EPA representative (“Inspector”) conducted an inspection of the Newark Liberty International Airport Facility (“EWR Inspection”) pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey’s authorized hazardous waste regulations.
19. On or about May 13, 2010, Respondent submitted documentation to EPA that was requested during the April 6, 2010 Inspection of the Lincoln Tunnel Facility.

20. Pursuant to Section 3007 of RCRA, 42 U.S.C. §§ 6927, on or about July 8, 2010, EPA issued an Information Request Letter ("IRL") to Respondent regarding its management of hazardous waste at its Lincoln Tunnel Facilities.
21. On or about September 10, 2010, Respondent submitted its response to EPA's July 2010 IRL ("IRL Response").
22. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about December 13, 2010, EPA issued a second Information Request Letter ("Second IRL") and a Notice of Violation ("NOV") to Respondent regarding its management of hazardous waste at its Facilities.
23. On or about February 16, 2011, Respondent submitted its response to EPA's December 2010 IRL/NOV.
24. On September 29, 2011, EPA issued a Complaint to Respondent alleging that Respondent had violated regulations governing the management of hazardous waste including: failure to make hazardous waste determinations as required by 6 NYCRR § 372.2(a)(2) and 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a); and storage at the Facilities of hazardous waste without a permit as required by 6 NYCRR § 373-1.2(a) and 40 C.F.R. § 270.(c), as incorporated by reference by NJAC 7:26G-12.1(a)
25. The parties have agreed to resolve this matter on the basis of the terms specified below.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the above Findings of Fact and Conclusions of Law; (c) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (d) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. As of the effective date of this Consent Agreement, Respondent shall:
 - a. make hazardous waste determinations for each solid waste generated at the Facilities pursuant to 6 NYCRR § 372.2(a)(2) and 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a);
 - b. comply with all applicable and appropriate provisions for the short term accumulation at the Facilities of hazardous waste by generators including:

6 NYCRR § 372.2(a)(8)(ii), including but not limited to conditions set forth in 6 NYCRR §§ 373-1.1(d)(1)(iii), (iv), (xix), and (xx), 40 C.F.R. § 262.34(a), as incorporated by reference by NJAC 7:26G-6.1(a); and
 - c. as an alternative to compliance with the generator provisions identified in this Consent Agreement, obtain and comply with hazardous waste storage permits for the Facilities from the New York State Department of Environmental Conservation pursuant to applicable provisions in 6 NYCRR and the New Jersey State Department of Environmental Protection pursuant to applicable provisions set forth in 40 C.F.R. Part 270, as incorporated by reference by NJAC. 7:26G-12. However, Respondent must comply with the appropriate requirements cited in Paragraph 1b, above, until such permits are obtained.
2. Within thirty (30) calendar days of the effective date of this Consent Agreement, Respondent shall submit to EPA: a) a written statement indicating for each of the Facilities whether it intends to operate as a Large Quantity Generator generating more than 1,000 kilograms of hazardous waste in a calendar month and observing the conditions for accumulation of hazardous waste without a permit, or as a permitted hazardous waste storage facility; and b) a statement indicating its compliance at the Facilities with paragraph 1 of this Consent Agreement, and all documentation demonstrating such compliance. Respondent's submission may reference information already submitted to EPA. If earlier submitted information is referenced, dates, and other identifying aspects, of these prior submissions should be indicated. If Respondent is not in compliance with a particular requirement, the notice shall state the reasons for such noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.
3. All responses, documentation, and evidence submitted pursuant to this Consent Agreement should be sent to:

Mr. Leonard Grossman
Senior Enforcement Team

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

4. Respondent shall hereinafter comply with all applicable federal and state regulatory requirements for the management of hazardous waste (6 NYCRR Parts 370 to 376 and N.J.A.C. 7:26G) at all of Respondent's Facilities.

5. Respondent shall pay a civil penalty to EPA in the total amount of **SIXTY ONE THOUSAND DOLLARS (\$61,000)**. Such payment shall be made by cashier's or 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, MO 63197-9000**

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY*, and shall bear thereon the Docket Number RCRA-02-2011-7110. Payment of the penalty must be *received* at the above address on or before forty five (45) calendar days after the Effective Date of this CA/FO (the due date).

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 D 68010727
Environmental Protection Agency.
- 6) Name of Respondent: Port Authority of New York and New Jersey
- 7) Case Number: RCRA-02-2011-7110.

Such EFT must be received on or before 45 calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Stuart N. Keith, Esq.
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866

- a. Failure to pay the requisite amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment 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 said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
- c. 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) calendar days of the date for which the payment was required hereto to have been made.
- d. The effective date of this Consent Agreement and Final Order shall be the date it is filed with the Regional Hearing Clerk.

6. Complainant shall mail to Respondent (or to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk

7. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement.

8. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal and state laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste, nor is it intended or is it to be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.

9. If in the future EPA believes that Respondent is not in compliance with this Consent Agreement, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA.

10. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve 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.

11. 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 makes any material misrepresentations or provides materially false information in any document submitted to EPA.

12. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.

13. This Consent Agreement 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 Consent Agreement or any of its terms and conditions.

14. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

15. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.

16. Respondent voluntarily waives any right it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, or the Regional Judicial Officer, Region 2, where the

purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

17. 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.

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

19. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when this CA/FO is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

RESPONDENT:

The Port Authority of New York and New Jersey

BY: Christopher Zeppie
(Authorized Signature)

NAME: Christopher Zeppie
(PLEASE PRINT)

TITLE: Director Office of Environmental & Energy Programs

DATE: 03/14/12

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:
<u>B</u>	<u>EP</u>

COMPLAINANT:

Dore LaPosta, Director

Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

DATE: March 18, 2012

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, 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 its filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York. 40 C.F.R. § 22.31(b).

BY: Judith A. Enck
Judith A. Enck

Regional Administrator
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: 5/19/12

**In the Matter of the Port Authority of New York and New Jersey
Docket No. RCRA-02-2011-7110**

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.
U.S. EPA- Region II
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Pouch Mail and FAX:

The Honorable Lisa Buschmann, Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W., Mail Code 1900L
Washington, DC 20460
FAX:(202) 565-0044

Copy by Certified Mail Return Receipt Requested:

Elizabeth Rogak, Esq.
Law Department
The Port Authority of NY and NJ
255 Park Avenue South, 13th Floor
New York, New York, 10003

Dated: 3/20/2012
New York, New York

Mildred N. Baer