

UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 REGION IX

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 U.S. EPA REGION IX
 REGIONAL HEARING CLERK

In the matter of)
) U.S. EPA Docket No.
) RCRA 09-2008- 0001
)
Concorde Garment)
Manufacturing Corp.) DETERMINATION OF VIOLATION,
) COMPLIANCE ORDER, AND
) NOTICE OF RIGHT TO
 TTR000128744) REQUEST A HEARING
)
 Respondent.)

I DETERMINATION OF VIOLATION

A. INTRODUCTION

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Concorde Garment Manufacturing Corp., based in Saipan ("Respondent" or "CGMC").
2. Respondent owned and operated a garment factory for the production of clothing at Lower Base, Saipan, in the Northern Mariana Islands (the "Facility"). The manufacturing process includes cutting, silk-screening and the sewing assembly of the clothing products. The Facility's EPA Identification No. is TTR000083204. CGMC ceased operations at this location on or about December 2006.
3. This Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint") serves as notice that EPA, on the basis of information available to it, has determined that Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6922, Section 3004, 42 U.S.C. § 6924, Section 3005, 42 U.S.C. § 6925, and regulations adopted pursuant thereto. This Complaint seeks to establish the amount of civil penalty that Respondent must pay for violations alleged herein.

B. JURISDICTION

4. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. §§ 260.10 and 270.2.
5. Respondent was the "owner and operator" of a "facility" as defined in 40 C.F.R. §§ 260.10

and 270.2 at the time the violations described herein were discovered.

6. Respondent was engaged in the "storage" of hazardous wastes as defined in 40 C.F.R. § 260.10 at the time the violations described herein were discovered.
7. Respondent was a "Small Quantity Generator" of hazardous waste as defined in 40 C.F.R. § 260.10 at the time the violations described herein were discovered.
8. At the Facility, through its silk-screening and printing operations, Respondent generated paint waste and solvents (RCRA waste code D001) and solvent contaminated rags which are "hazardous wastes" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. §§ 260.10 and 261.3. Respondent also generated used oil.
9. Respondent is, therefore, subject to the federal regulations adopted pursuant to Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924.
10. Federal regulations establishing generator standards, 40 C.F.R. Part 262, and establishing owner and operator standards, 40 C.F.R. Part 265, became effective on November 19, 1980. Federal regulations governing the hazardous waste permit program, 40 C.F.R. Part 270, became effective April 1, 1983.
11. On March 5, 2004 EPA conducted a RCRA inspection at the Facility.
12. Based on the March 5, 2004 inspection and documents submitted by Respondent thereafter, as further described later in this Complaint, EPA determined that Respondent has violated the following regulations: 40 C.F.R. § 262.11; 40 C.F.R. § 262.34; 40 C.F.R. § 262.30; 40 C.F.R. § 262.12; 40 C.F.R. § 262.20; and 40 C.F.R. § 270.1.
13. Respondent, in violating the regulations cited above, violated Subtitle C of RCRA, and therefore is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA et seq., 42 U.S.C. § 6921 et seq.
15. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IX, pursuant to Delegation number 8-9-A, who has redelegated this authority to the Director of the Waste Management Division pursuant to Delegation number R9 1280.04.

C. VIOLATIONS

COUNT I

Failure to Make a Hazardous Waste Determination

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 40 C.F.R. § 262.11 requires that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste.
18. At the time of the inspection, Respondent had failed to determine if several solid wastes streams were hazardous, as detailed in the following paragraphs.
19. In the "new addition" area of the print shop, the EPA Inspector observed a 55-gallon drum on a pallet, with the word "thinner" written on the side. Respondent's employees informed the EPA Inspector that the drum contained "waste paint thinner."
20. Respondent failed to determine if the 55-gallon drum of waste paint thinner was hazardous.
21. Outside of the screen printing building, the EPA Inspector observed 15 to 20 large plastic garbage bags containing liquid-saturated rags, open cans partially filled with liquid, and approximately 10 one- to five-gallon buckets containing liquid.
22. The Inspector noted a strong smell of solvents from the contents of the bags.
23. Respondent's employees informed the Inspector that the rags were contaminated with paint thinner and methylene chloride, that the cans contained "waste paint thinner," and that the buckets contained waste paint and waste paint thinner.
24. Respondent failed to determine if the contents of the 15 to 20 garbage bags, the cans and the buckets were hazardous.
25. Respondent provided EPA with copies of the Material Safety Data Sheets (MSDS's) for the paint thinner that Respondent uses at the Facility. The paint thinner has a flash point of 102 degrees Fahrenheit. A solid waste exhibits the characteristic of ignitability if it is a liquid with a flash point of less than 140 degrees Fahrenheit. The paint thinner in the garbage bags therefore was a hazardous waste under 40 §§ CFR 261.3 and 261.21.
26. Methylene chloride is a listed hazardous waste (F001, F002, U080) under 40 CFR §§ 261.31 and 261.33.
27. Therefore, Respondent failed to make a hazardous waste determination, and violated 40 C.F.R. § 262.11.

COUNT II

Failure to Meet Container Management Requirements

28. Paragraphs 1 through 27 above are incorporated herein by this reference as if they were set forth here in their entirety.
29. 40 C.F.R. § 265.173(a) requires that containers holding hazardous waste shall always be closed during transfer and storage, except when it is necessary to add or remove waste.
30. During the CEI on March 5, 2004, the EPA Inspector observed several cans of waste paint thinner which were open at a time when waste was neither being added nor removed from those containers.
31. 40 C.F.R. § 265.173(b) states that a container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.
32. During the CEI the EPA Inspector noted that hazardous waste, consisting of solvent-contaminated rags and open containers half-filled with paint waste, was placed inside plastic garbage bags, which are likely to rupture allowing the hazardous waste to leak.
33. Therefore Respondent violated 40 C.F.R. § 265.173.

COUNT III

Offering Waste to a Transporter and TSD Without an EPA ID number

34. Paragraphs 1 through 33 above are incorporated herein by this reference as if they were set forth here in their entirety.
35. 40 C.F.R. § 262.12 states that a generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal ("TSD") facilities that have not received an EPA identification number.
36. Records provided by the Respondent indicate that Respondent delivered 1,477 pounds of hazardous waste, consisting of rags contaminated with waste paint thinner, methylene chloride, and waste paint, to the Commonwealth Port Authority for transport and disposal.
37. Respondent shipped the hazardous waste at issue on at least four occasions: September 30, 2003; October 2, 2003; October 7, 2003; and November 13, 2003.
38. At the time of the shipments, the Commonwealth Port Authority did not have an EPA ID number as a transporter or TSD.
39. Therefore Respondent violated 40 C.F.R. § 262.12(c).

COUNT IV

Failure to Prepare a Hazardous Waste Manifest

40. Paragraphs 1 through 39 above are incorporated herein by this reference as if they were set forth here in their entirety.
41. 40 C.F.R. § 262.20 requires that a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22 ("hazardous waste manifest").
42. Respondent failed to prepare a hazardous waste manifest for any of the 1,477 pounds of hazardous waste.
43. Respondent shipped the hazardous waste at issue on at least four occasions.
44. Therefore Respondent violated 40 C.F.R. § 262.20.

COUNT V

Failure to Ensure that Employees are Familiar with Waste Handling Procedures

45. Paragraphs 1 through 44 above are incorporated herein by this reference as if they were set forth here in their entirety.
46. Respondent's records indicate that Respondent is a small quantity generator who generates greater than 100 kg of hazardous waste in a calendar month. Respondent does not have interim status nor a RCRA permit. 40 C.F.R. § 262.34(d) requires that such a generator ensure that all employees are thoroughly familiar with proper waste handling procedures. Proper handling of hazardous waste requires closing containers when not adding or removing waste, as provided by 40 C.F.R. § 265.173(a); labeling of containers with the words "hazardous waste" and the accumulation date, as provided by 40 C.F.R. § 262.34(d)(4); and use of containers not likely to rupture, under 40 C.F.R. § 265.173(b).
47. At the time of the inspection, the Inspector observed open containers holding waste paint thinner when waste was neither being added nor removed. The inspector also observed plastic garbage bags containing solvent-saturated rags and open open cans and buckets holding waste solvents. These containers were not properly labeled and the bags were likely to rupture and allow hazardous wastes to leak.
48. At the time of the inspection, Respondent's employees were not familiar with proper waste handling procedures.
49. Therefore, Respondent has violated 40 C.F.R. § 262.34(d).

COUNT VI

Storage of Hazardous Waste Without a Permit

50. Paragraphs 1 through 49 above are incorporated herein by this reference as if they were set forth here in their entirety.
51. 40 C.F.R. § 270.1(c) requires each person owning or operating a RCRA hazardous waste storage facility to have a permit.
52. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste under 40 C.F.R. § 270.1(c).
53. Documents submitted by the Respondent indicate that Respondent is a small quantity generator of hazardous waste.
54. 40 C.F.R. § 262.34(d) provides that small quantity generators of hazardous waste may accumulate hazardous waste onsite for a limited period of time, without a permit or grant of interim status, provided the generator complies with the requirements which are set forth or referenced by 40 C.F.R. § 262.34. Failure to comply with the time limits or any of the requirements set forth in or referenced by 40 C.F.R. § 262.34 subjects the generator to the permitting requirements of 40 C.F.R. § 270.1(c).
55. Respondent violated several of the requirements set forth or referenced in 40 C.F.R. § 262.34, listed below.
56. **Labeling "Hazardous Waste."** 40 C.F.R. § 262.34(d)(4) requires that generators who accumulate hazardous waste onsite without a permit or grant of interim status shall label containers with the words "hazardous waste" and the date each period of accumulation begins. Generators who fail to label containers of hazardous waste as required fail to meet the requirements of 40 C.F.R. § 262.34(d) and are subject to the permitting requirements of 40 C.F.R. § 270.1(c).
57. During the CEI on March 5, 2004, outside the screen printing area, the EPA Inspector noted 25 large trash bags containing hazardous waste without the required labeling.
58. During the CEI on March 5, 2004, in the "new addition" area of the print shop, the EPA Inspector observed a 55-gallon drum containing waste paint thinner, RCRA waste code D001, that was not properly labeled.
59. Respondent's storage of hazardous waste without labeling the containers as "Hazardous Waste" and the date of hazardous waste accumulation did not comply with the labeling requirements of 40 C.F.R. § 262.34(d)(4). Therefore, Respondent has violated 40 C.F.R. § 270.1(c).

60. **Failure to Meet Container Management Requirements.** 40 C.F.R. § 262.34 requires that small quantity generators who accumulate hazardous waste onsite without a permit or grant of interim status comply with the requirements of 40 C.F.R. § 265.173. 40 C.F.R. § 265.173(a) requires that containers holding hazardous waste shall always be closed during transfer and storage, except when it is necessary to add or remove waste. 40 C.F.R. § 265.173(b) states that a container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.
61. During the CEI on March 5, 2004, the EPA Inspector observed several cans of waste paint thinner which were open at a time when waste was neither being added nor removed from those containers.
62. During the CEI the EPA Inspector noted that hazardous waste, consisting of open containers half-filled with paint waste, was placed inside plastic garbage bags, which are likely to rupture allowing the hazardous waste to leak.
63. Respondent's failure to close containers of hazardous waste, and failure to package hazardous waste appropriately, violated 40 C.F.R. § 265.173. Therefore, Respondent has violated 40 C.F.R. § 270.1(c).

D. CIVIL PENALTY

64. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Debt Collection Improvement Act of 1996, 40 C.F.R. Part 19, authorizes a civil penalty of up to TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500.00) per day for each violation of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq. occurring on or after January 31, 1997 but before March 16, 2004. Therefore, Complainant requests that the Administrator assess a civil penalty against Respondent of up to \$27,500 per day for each day during which a violation cited in the above outlined Counts continued.

Count I – Failure to Make a Hazardous Waste Determination

EPA determined that this violation resulted in significant risk to human health and the environment and demonstrates substantial noncompliance with the applicable requirement. Respondent was in violation of this requirement for at least one day, the day of the inspection.

Count II - Failure to Meet Container Management Requirements

EPA determined that this violation resulted in significant risk to human health and the environment and demonstrates significant noncompliance with the applicable requirement. Respondent was in violation for at least one day, the day of the inspection.

Count III - Offering Waste to a Transporter and TSD without an EPA ID number

EPA determined that this violation resulted in substantial risk to human health and the environment and demonstrates substantial noncompliance with the applicable requirement. Respondent offered hazardous waste to a transporter without an EPA identification number on at least three separate occasions, or at least four days.

Count IV - Failure to Prepare a Hazardous Waste Manifest

EPA determined that this violation resulted in substantial risk to human health and the environment and demonstrates substantial noncompliance with the applicable requirement. Respondent failed to prepare a hazardous waste manifest on at least three separate occasions, or at least four days.

Count V - Failure to Maintain Proper Records

EPA determined that this violation resulted in significant risk to human health and the environment and demonstrates significant noncompliance with the applicable requirement. The Facility was in violation for at least one day, the day of the inspection.

Count VI - Storage of Hazardous Waste without a Permit

EPA determined that this violation resulted in significant risk to human health and the environment and demonstrates significant noncompliance with the applicable requirement. Respondent was in violation of this requirement for at least one day, the day of the inspection.

II. NOTICE OF RIGHT TO REQUEST A HEARING

A. PUBLIC HEARING

65. In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), the Compliance Order set forth herein shall become final unless Respondent files an Answer and request for public hearing in writing no later than thirty (30) days after the Effective Date of this Complaint with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX, 75 Hawthorne St., San Francisco, California 94105. A copy of the Answer and request for hearing and copies of all other documents relating to these proceedings filed with the Regional Hearing Clerk should be sent to Harrison Karr (ORC-3), Assistant Regional Counsel at the same address.
66. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. A failure to admit, deny or explain any material fact or allegation contained in this Complaint will constitute an admission of the allegation. Where the Respondent has no knowledge of a

particular factual allegation and so states, the allegation is deemed denied. The Answer must also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which Respondent intends to place at issue, (3) the basis for opposing any proposed relief, and (4) whether a hearing is requested.

67. If Respondent fails to file a written Answer within thirty (30) days of the Effective Date of this Complaint, Respondent may be found in default. Respondent's default will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing.
68. If Respondent requests a public hearing, it will be held in a location determined in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which accompanies the Complaint. The hearing will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 552 et seq., and 40 C.F.R. Part 22. Respondent may request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order.
69. Pursuant to 40 C.F.R. § 22.7(c) of the Consolidated Rules of Practice, where a pleading or document is served by first class mail or commercial delivery service, but not by overnight or same-day service, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.

B. INFORMAL SETTLEMENT

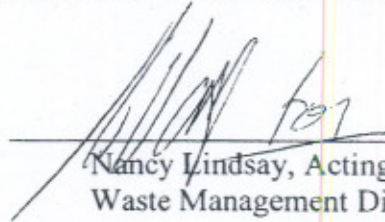
70. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the alleged facts, violations and amount of the penalty. An informal conference does not, however, affect Respondent's obligation to file a written Answer within thirty (30) days of the Effective Date of the Complaint. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.
71. Any settlement reached as a result of an informal conference will be embodied in a written Consent Agreement and Final Order. The issuance of the Consent Agreement and Final Order will constitute waiver of Respondent's right to a hearing on any matter to which Respondent has stipulated.
72. If a settlement cannot be reached through an informal conference, the filing of a written Answer within thirty (30) days of the Effective Date of this Complaint will preserve Respondent's right to a hearing.
73. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Harrison Karr, ORC-3, Assistant Regional Counsel, Office of Regional Counsel, at the above address,

telephone number (415) 972-3939.

EFFECTIVE DATE

74. The "Effective Date" of this Complaint is the date of Service. Service is complete when the return mail receipt is signed by the Respondent or a duly authorized representative of the Respondent, in accordance with the provisions of 40 C.F.R. §§ 22.5(b) and 22.7(c).

10/24/07
Date


Nancy Lindsay, Acting Director
Waste Management Division

CERTIFICATION OF SERVICE

I hereby certify that the original of the foregoing Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing was filed with the Regional Hearing Clerk, Region IX, and that a copy was sent, along with a copy of 40 C.F.R. Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, certified mail, return receipt requested, to:

Steven P. Pixley, Esq.
Second Floor, CIC Centre
P.O. Box 7757 S.V.R.B.
Saipan M.P. 96950

10/30/07

Date

Barbara Johnson
Hazardous Waste Management Division