

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Essilor Laboratories of America, Inc. dba Tri-
Supreme Optical, LLC,

Respondent.

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

CONSENT AGREEMENT AND FINAL ORDER

Docket No. RCRA-02-2025-7102

PRELIMINARY STATEMENT

1. This is a civil administrative enforcement proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes 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 the “Act” or “RCRA”).

2. The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the handling and management of hazardous waste at Title 40 of the Code of Federal Regulations (“C.F.R.”) Parts 260-273 and 279. 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.

3. Pursuant to 40 C.F.R. § 22.13(b), 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 the issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions.

4. EPA has given notice of this action to the State of New York.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent

1. Respondent has advised EPA that it is Essilor Laboratories of America, Inc. dba Tri-Supreme Optical, LLC, a for-profit corporation organized pursuant to the laws of the State of North Carolina.

2. Respondent has been the owner and/or operator of an eye glass lens manufacturing facility located at 91 Carolyn Boulevard, Farmingdale, New York 11735 ("Facility") since June of 2004.

3. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 6 New York Codes, Rules and Regulations ("NYCRR") § 370.2(b).

4. Respondent is an "owner" and/or "operator" of the Facility as those terms are defined in 6 NYCRR § 370.2(b).

Respondent's Generation and Management of Hazardous Waste

5. Respondent, in carrying out its manufacturing activities and in the course of conducting normal building maintenance operations, has been generating, and continues to generate, "solid waste," as defined in 6 NYCRR § 371.1(c), at the Facility.

6. Respondent, in carrying out its manufacturing activities and in the course of normal building maintenance, has been generating, and continues to generate, "hazardous waste," as defined in 6 NYCRR § 371.1(d), at the Facility.

7. Since at least August 2023, Respondent has generated, on average, more than 100 kilograms but less than 1000 kilograms of non-acute hazardous waste in a calendar month and as a result is a "small quantity generator of hazardous waste," as that phrase is defined in 6 NYCRR § 370.2(b).

EPA Inspection and Summary of Conditions at the Facility

8. On or about August 23, 2023, a duly designated representative of EPA conducted an inspection of the Facility, 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's authorized hazardous waste regulations (the "2023 Inspection").

9. Prior to and at the time of the 2023 Inspection, contact information for emergency coordinators and information on the location of fire extinguishers and spill-control materials were not posted near the telephone in the surfacing area storage area or in two outdoor central storage areas ("Outdoor Storage Area 1" and "Outdoor Storage Area 2").

10. Prior to and at the time of the 2023 Inspection, Outdoor Storage Areas 1 and 2 did not have fire extinguishers or spill control equipment.

11. Prior to and at the time of the 2023 Inspection, a 55-gallon drum of hazardous waste located in Outdoor Storage Area 1 displayed a label dated June 9, 2021, indicating that it had been stored at the Facility over 180 days.

12. Prior to and at the time of the 2023 Inspection, a 55-gallon drum of hazardous waste located in the surfacing area storage area, a 55-gallon drum of hazardous waste located in Outdoor Storage Area 1, and a 55-gallon drum of hazardous waste located in Outdoor Storage Area 2 were all undated.

13. Prior to and at the time of the 2023 Inspection, Respondent did not conduct weekly inspections of the surfacing area storage area.

14. Prior to and at the time of the 2023 Inspection, the Facility failed to make arrangements with local authorities and hospitals to familiarize them with the hazardous waste handled at the Facility and the types of injuries or illness which could result from Facility operations.

15. Prior to and at the time of the 2023 Inspection, Respondent did not have a hazardous waste permit and failed to meet the conditions necessary to accumulate hazardous waste without having obtained a permit or qualifying for interim status.

16. Later in the day following the 2023 Inspection, Respondent provided documentation to EPA as requested by the inspector during the inspection with respect to the items described in Paragraphs 9-15 above.

Information Request, NOV, and Responses

17. On or about November 1, 2023, EPA sent Respondent a combined Notice of Violation and Request for Information ("NOV-IRL"), issued pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927-6928, informing Respondent that EPA had identified potential RCRA violations at the Facility and requested that Respondent provide a description and documentation of the actions it had taken to correct the violations identified. The NOV-IRL also sought information and documentation relating to Respondent's generation and management of hazardous waste at the Facility.

18. On or about November 8, 2023, Respondent submitted its response to the NOV-IRL ("NOV-IRL Response").

19. On or about June 21, 2024, EPA issued a letter to Respondent with the subject line "Opportunity to Enter into Settlement Discussions with EPA Concerning Potential Violations of RCRA."

20. Since June 2024, EPA and Respondent have had several informal settlement conferences, telephone calls, and email exchanges. The Parties agreed to settle this matter as provided herein.

TERMS OF CONSENT AGREEMENT

21. Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant and Respondent, for the 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, that:

- a. Respondent admits that EPA Region 2 has jurisdiction under RCRA to prosecute this proceeding;
- b. Respondent neither admits nor denies the EPA Findings of Fact and Conclusions of Law section of this Consent Agreement;
- c. Respondent consents to the assessment of the civil penalty as set forth below;
- d. Respondent consents to the issuance of the Final Order incorporating all provisions of this Consent Agreement;
- e. Respondent waives any right it might possess to obtain judicial or administrative review of the Final Order accompanying this Consent Agreement; and
- f. Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

22. Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order shall become effective and binding when filed with the EPA Region 2 Regional Hearing Clerk (such date henceforth referred to as the "Filing Date").

23. Respondent acknowledges that it must comply with RCRA and all applicable federally-authorized New York hazardous waste regulations applicable to the generation, storage, and management of hazardous waste at the Facility, including:

- a. Meeting hazardous waste storage requirements including proper labeling and dating of hazardous waste containers, availability of fire extinguishers and spill control equipment in hazardous waste storage areas, posting of emergency contact information near telephones, inspections of hazardous waste storage areas on a weekly basis, and the legal disposal of hazardous waste offsite within 180 days, in accordance with 6 NYCRR Part 373.
- b. Making arrangements to familiarize police, fire departments, and emergency response teams with the layout of the Facility, the properties of hazardous waste handled at the Facility and associated hazards, places where facility personnel would normally be working, entrances to any roads inside the Facility, and possible evacuation routes, in accordance with 6 NYCRR § 373-3.3(g)(1)(i); and
- c. Making arrangements to familiarize local hospitals with the properties of hazardous waste handled at the Facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility in accordance with 6 NYCRR § 373-3.3(g)(1)(iv); and

24. Respondent hereby certifies that, as of the date of its signature of this Consent Agreement and to the best of its knowledge and belief, it is in compliance at the Facility with applicable RCRA requirements, especially but not limited to the requirements referenced in EPA's Findings of Facts and Conclusions of Law of this CAFO and set out in the prior paragraph.

25. Respondent agrees to pay a civil penalty in the amount of **\$15,000** ("Assessed Penalty") within 30 calendar days of the Filing Date. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

26. When making a payment, Respondent shall:

- a. Identify the payment with Respondent's name and the docket number of this Consent Agreement, RCRA-02-2025-7102.
- b. Concurrently with payment or within twenty-four (24) hours of payment, Respondent shall serve proof of such payment by email to the following persons:

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

William Chernes
Enforcement and Compliance Assurance Division

Chernes.William@epa.gov

Lauren Charney
Office of Regional Counsel
Charney.Lauren@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

27. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs, and late payment penalties on outstanding debts owed to the United States, and a charge to cover costs of processing and handling delinquent claims.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS standard underpayment rate, as any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar period, or any portion thereof, following the date the Assessed Penalty was to have been made, in which payment of the amount remains in arrears.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days.

28. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

29. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

30. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

31. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via email to designated representative: Kevin N. McMurray, Frost Brown Todd LLP, 301 East 4th Street, Cincinnati, Ohio, KMcMurray@fbtlaw.com. Receipt of the fully executed CAFO by the designated representative shall constitute Respondent's receipt and acceptance of the CAFO. Except as the parties may otherwise agree in writing, EPA shall send any future written communications related to this matter (including any correspondence related to payment of the penalty) by email to this designated representative.

32. Except as the parties may otherwise agree in writing, all documentation and information related to the terms and conditions of this Consent Agreement shall be sent by email to:

William Chernes, Compliance Officer
Enforcement & Compliance Assurance Division
Chernes.William@epa.gov

and

Lauren Charney, Assistant Regional Counsel
Office of Regional Counsel
Charney.Lauren@epa.gov

33. In accordance with 40 C.F.R. § 22.18(c), Respondent's full payment of the Assessed Penalty shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically described in Paragraphs 9 to 15 herein. Nothing in this document is intended or shall be 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 during this proceeding.

34. This CAFO is not intended, and shall not be construed, to waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local laws or regulations, nor shall it be construed to be a ruling on or determination of any issue related to any federal, state, or local permit. The CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

35. Respondent has read this Consent Agreement, understands its terms, and agrees that the provisions herein shall be binding upon Respondent and its successors and assigns. The signatory for Respondent certifies that: (a) they are duly and fully authorized to enter into and ratify this Consent Agreement and to accept the accompanying Final Order and all the terms, provisions, and requirements set forth in this CAFO, and (b) they are duly and fully authorized to bind the party on behalf of which they are entering this CAFO to comply with and abide by all the terms, provisions, and requirements of this CAFO.

36. Each party hereto agrees to bear its own costs and attorney's fees in this matter.

RESPONDENT:

BY: _____
(Signature)

NAME: Joe Ciochetto
(Please Print)

TITLE: Vice President Industrial Labs

COMPLAINANT:

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Essilor Laboratories of America, Inc. dba Tri-Supreme Optical, LLC*, Docket number RCRA 02-2025-7102. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order, which represents a consent order memorializing a settlement between EPA and the Respondent. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA, Region 2, New York, New York (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 3008(a) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928(a).

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

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, by email to the following addressees below:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
Maples.Karen@epa.gov

Kevin N. McMurray, Attorney
Frost Brown Todd LLP
kmcmurray@fbtlaw.com
301 East 4th Street, Suite 3300
Cincinnati, OH 45202

Signature: _____