



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

MAY 8 2008

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Robert L. Sweeney  
Whiteman Ostermann & Hanna, LLP  
One Commerce Plaza  
Albany, New York 12260

Re: Crossgates Mall Company, LP  
Pyramid Management Group, Inc., and  
Crossgates Mall Company Newco, LLC  
Docket No. RCRA-02-2007-7113

Dear Mr. Sweeney:

Enclosed please find a fully executed Order. This Order is effective upon the date of filing with the Regional Hearing Clerk. Please note that payment is due within forty-five (45) days of the date the Order was signed by the Regional Administrator.

Thank you for your assistance.

Sincerely,

Carl R. Howard  
Assistant Regional Counsel

cc: William B. Moran, Administrative Law Judge  
Thomas Killeen, New York State Department of Environmental Conservation

Enc.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 MAY - 8 PM 3:43  
REGIONAL HEARING  
CLERK

bcc: Hanna Maciejko, (2DEPPP-RPB)  
Beth Totman(2PAD)  
George Meyer (2DECA-RCB)  
Blake Edwards (CFC)  
Steven Petrucelli (2DECA-RCB)  
Carl Howard (2WTS-ORC)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 MAY - 8 PM 3:43  
REGIONAL HEARINGS  
CLERK

-----X  
In the Matter of: :  
 :  
 :  
Crossgates Mall Company, LP, :  
Pyramid Management Group, Inc, :  
And, :  
Crossgates Mall Company Newco, :  
LLC, :  
Respondent. :  
 :  
Proceeding Under Section 3008 :  
of the Solid Waste Disposal Act, :  
as amended. :  
-----X

**CONSENT AGREEMENT AND  
FINAL ORDER**

Docket No. RCRA-02-2007-7113

This is a civil administrative 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").

The Complainant in these proceedings is the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute and carry forward this proceeding. The Complainant issued a "Complaint, Compliance Order and Notice of Opportunity for Hearing" to Respondent on September 28, 2007, bearing the docket number listed above. The Complaint alleged that Respondent had failed to comply with certain applicable requirements of the authorized New York State hazardous waste program, and had been improperly handling and disposing of spent fluorescent light bulbs and other types of spent bulbs that may contain lead and/or mercury in the trash at its Crossgates Shopping Mall in Guilderland, New York.

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 matter without further litigation.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Respondents in this action include:
  - a. Crossgates Mall Company, LP, an owner and/or operator of the Facility (as defined in paragraph five (5), below,
  - b. Pyramid Management Group, Inc., an owner and/or operator of the Facility, and,
  - c. Crossgates Mall Company Newco, LLC, an owner of the real estate on which the Crossgates Shopping Mall is located and which is an owner and/or operator of the Facility.
2. Respondents collectively are hereinafter referred to in the singular as Respondent.
3. Respondent is subject to the requirements of the Act, and its implementing regulations, including the authorized New York State hazardous waste regulations.
4. As more fully set forth in the allegations contained in the Complaint, Respondent has violated certain applicable federally enforceable authorized state regulations governing the management of hazardous waste at its facility.
5. As a result of EPA's Inspection on March 15, 2007 and Respondent's response to an information request letter, the EPA Inspector documented that Respondent generated, handled and stored spent light bulbs at its Crossgates Shopping Mall at 1 Crossgates Mall Road, Albany, New York 12203 (the "Facility").
6. The Facility includes two levels of stores and has five (5) anchor stores. Respondent has informed EPA that its tenants are responsible for their waste generation and disposal, except Respondent provides some tenants with a central station trash compactor and/or recycling services for non-hazardous solid wastes generated by tenants at the Facility

(except for certain anchor and other stores which handle their own solid waste disposal). Under the terms of current leases, tenants are responsible for compliance with all environmental laws and are prohibited from disposing of any hazardous materials except in compliance with environmental laws. Respondent was responsible for several major relamping projects at the Facility and for common area spent bulb handling and disposal. Respondent encourages tenants to participate in its universal waste lamp recycling program.

7. At the time of EPA's Inspection, Respondent was a Small Quantity Handler of Universal Waste as that term is defined at 6 NYCRR § 374-3.1(i)(9).
8. Respondent generated and disposed of its spent incandescent, fluorescent, high pressure sodium vapor, and metal halide lamps as ordinary trash at the Facility without making a determination about whether such solid waste constituted a hazardous waste in violation of 6 NYCRR § 372.2(a)(2). Complainant acknowledges that Respondent properly recycled spent lamps generated during major relamping projects in 2005 and 2006.
9. Because Respondent failed to make hazardous waste determinations about certain of the spent lamps it generated, and also failed to manage certain of these spent lamps as Universal Waste, Respondent was subject to full regulation pursuant to 6 NYCRR §§ 370 through 376.
10. Pursuant to 6 NYCRR § 373-2.3(b), facilities must be maintained and operated to minimize the possibility of any unplanned sudden or non-sudden releases of hazardous waste or hazardous waste constituents to the air, soil, or surface water which could threaten human health or the environment.
11. Respondent disposed of spent incandescent, fluorescent, high pressure sodium vapor, and

metal halide lamps with the ordinary trash in a trash compactor at its Facility. Such disposal increased the likelihood of releases of mercury to the air, soil or surface water and could threaten human health or the environment.

12. Respondent's failure to ensure that its spent lamps were managed in a way specified in the regulations that prevented releases to the environment constitutes a violation of 6 NYCRR § 374-3.2(d)(4).
13. In the alternative, Respondent's failure to maintain and operate its Facilities to minimize the possibility of any unplanned sudden or non-sudden releases of hazardous waste or hazardous waste constituents to the air, soil, or surface water which could threaten human health or the environment constitutes a violation of 6 NYCRR § 373-2.3(b).
14. Respondent has informed EPA that it is managing and intends to continue to manage its waste lamps under the Universal Waste standards set out in 6 NYCRR § 374-3.
15. Respondent has informed EPA that it accumulates less than 5,000 kilograms of total Universal Waste (batteries, pesticides, mercury-containing equipment or lamps calculated collectively) at any time at its Facility.

#### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928 and 40 C.F.R. § 22.18 (2007) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, the parties hereby agree, as follows:

1. Respondent admits the jurisdictional allegations contained in the Complaint and neither admits nor denies the specific factual allegations contained in the Complaint.
2. Respondent consents to the payment of a civil penalty as set forth in this CA/FO, and

agrees to comply with the compliance provisions of this CA/FO, and with its conditions.

3. This CA/FO shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, state, or local law nor shall this CA/FO be construed as a ruling on, or determination of, any issue related to any federal, state, or local permit.
4. Respondent shall pay a civil penalty to EPA in the total amount of **twenty-seven thousand three hundred dollars (\$27,300)**. 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

5. The check shall be identified with a notation listing the following: **In the Matter of Crossgates Mall Company, LP, Pyramid Management Group, Inc., and Crossgates Mall Company Newco, LLC, and shall bear thereon the Docket Number RCRA-02-2007-7113.** 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").
6. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:
  - a. Amount of Payment
  - b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 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: **Crossgates Mall Company, LP; Pyramid Management Group, Inc.; and Crossgates Mall Company Newco, LLC.**  
g. Case Number: **RCRA-02-2007-7113.**

Such EFT must be received on or before forty-five (45) calendar days after the Effective Date of this CA/FO. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

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

and

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

7. Failure to pay the 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.
8. 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 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 \$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 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of the due date.
9. The civil penalty constitutes a penalty in the meaning of 26 U.S.C. § 162(f).
10. Commencing on the effective date of the Final Order, Respondent shall make a

determination whether its spent bulbs are a hazardous waste pursuant to 6 NYCRR § 372.2(a)(2). Respondent shall also comply with applicable requirements in 6 NYCRR § 374-3.2 including those for management of waste lamps (as described in 6 NYCRR § 374-3.1(e)) set forth in 6 NYCRR § 374-3.2(d)(4).

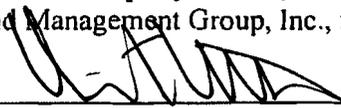
11. Respondent agrees that within thirty (30) days of the effective date of the Final Order, Respondent shall establish a policy and standard operating protocols to provide for recycling of all waste non-mercury-containing hazardous waste bulbs and all mercury-containing bulbs (hazardous or non-hazardous waste) at or from all of its malls and other commercial properties in New York and New Jersey.
12. Respondent shall submit to EPA within forty-five (45) calendar days of the effective date of the Final Order, written notice of its compliance with each of the requirements in Paragraphs 10 and 11, above. Respondent agrees that such notice of compliance shall extend to all of Respondent's malls in New York and New Jersey. Notice shall be sent to:  
  
Steven Petrucelli, Environmental Engineer  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway – 21<sup>st</sup> floor  
New York, New York 10007-1866
13. 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 (upon full payment of the penalty). Nothing herein shall be read to preclude EPA or the United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
14. Respondent has read the foregoing Consent Agreement, understands its terms, finds it to

be reasonable and consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

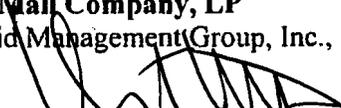
15. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations asserted therein, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
16. Respondent waives any rights it may have 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 or the Deputy Regional Administrator 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.
17. Respondent 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.
18. Each party hereto agrees to bear its own costs and fees in this matter.
19. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
20. 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 or legal proceeding, except one to enforce the terms of this CA/FO.
21. The provisions of this CA/fo shall be binding upon Respondent, its officials, authorized representatives, successors and assigns.

**In the Matter of Crossgates Mall Company, LP, Pyramid Management Group, Inc., and  
Crossgates Mall Company Newco, LLC**  
Docket No. RCRA-02-2007-7113

RESPONDENTS: **Crossgates Mall Company Newco, LLC**  
BY: Pyramid Management Group, Inc., its managing agent

BY:   
(Signature)  
NAME: Robert L. Utter  
(PLEASE PRINT)  
TITLE: Vice President  
DATE: 5/2/08

**Crossgates Mall Company, LP**  
BY: Pyramid Management Group, Inc., its managing agent

BY:   
(Signature)  
NAME: Robert L. Utter  
(PLEASE PRINT)  
TITLE: Vice President  
DATE: 5/2/08

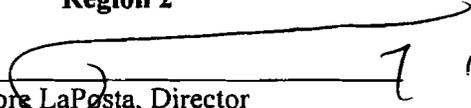
**Pyramid Management Group, Inc.**

BY:   
(Signature)  
NAME: Robert L. Utter  
(PLEASE PRINT)  
TITLE: Vice President  
DATE: 5/2/08

**In the Matter of Crossgates Mall Company, LP, Pyramid Management Group, Inc., and  
Crossgates Mall Company Newco, LLC**  
Docket No. RCRA-02-2007-7113

COMPLAINANT: **United States Environmental Protection Agency  
Region 2**

BY: \_\_\_\_\_

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

*Patricia Dunne for DL*

DATE: MAY 6, 2008

In the Matter of Crossgates Mall Company, LP, Pyramid Management Group, Inc., and  
Crossgates Mall Company Newco, LLC  
Docket No. RCRA-02-2007-7113

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. The Agreement entered into by the parties is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk.



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

DATE: 5-7-08

**In the Matter of Crossgates Mall Company, LP, Pyramid Management Group, Inc., and  
Crossgates Mall Company Newco, LLC**  
Docket No. RCRA-02-2007-7113

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 Hand:

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency  
- Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Mr. Robert L. Sweeney  
Whiteman Osterman & Hanna LLP, Inc.  
One Commerce Plaza  
Albany, New York 12260

Copy by Pouch Mail:

Honorable William B. Moran  
Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dated:     MAY 8 2008    

