



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2019

REPLY TO THE ATTENTION OF

VIA EMAIL

Mr. Kevin N. McMurray, Esq.
Frost Brown Todd, LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
kmcmurray@fbtlaw.com

Re: Consent Agreement and Final Order
Luxottica of America, Incorporated
Docket No: **RCRA-05-2019-0017**

Dear Mr. McMurray:

Attached please find a copy of the signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on September 30, 2019, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$35,000 in the manner prescribed in paragraph 112 of the CAFO, and reference all checks with the docket number **RCRA-05-2019-0017**. Your payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions, your staff may contact me at (312) 886-0989 or at gangwisch.bryan@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Gangwisch".

Bryan Gangwisch
Land and Chemicals Enforcement and Compliance Assurance Branch

Enclosure

cc: Mitchell Mathews, Mitchell.Mathews@epa.ohio.gov (w/CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Luxottica of America Inc.

Mason, Ohio,

Respondent.



Docket No. RCRA-05-2019-0017

Proceeding to Commence and Conclude
an Action to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2) on February 25, 2019.
4. Respondent is Luxottica of America Inc. ("Luxottica" or "Respondent"), a corporation doing business in the State of Ohio.
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. For the purpose of this proceeding, Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

11. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3001 – 3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934.

12. Among other requirements, U.S. EPA promulgated regulations at 40 C.F.R. Part 270, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 3005(a), requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste to have a permit issued under that Section.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the

federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989 (54 Fed. Reg. 27170, June 28, 1989). U.S. EPA subsequently approved of amendments to the Ohio hazardous waste program effective June 7, 1991, (56 Fed. Reg. 14203, April 8, 1991); effective August 19, 1991, (56 Fed. Reg. 28088, June 19, 1991); effective September 25, 1995, (60 Fed. Reg. 38502); July 27, 1995); effective December 23, 1996, (61 Fed. Reg. 54950, October 23, 1996); effective January 24, 2003, (68 Fed. Reg. 3429, January 24, 2003); effective January 20, 2006, (71 Fed. Reg. 3220, January 20, 2006); effective October 29, 2007, (72 Fed. Reg. 61063, October 29, 2007); effective March 19, 2012, (77 Fed. Reg. 25966, March 19, 2012); and effective February 12, 2018, (83 Fed. Reg. 5948, February 12, 2018).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

16. The Administrator of U.S. EPA may assess a civil penalty of up to \$97,229 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015, and where the penalties are assessed on or after January 15, 2018, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. Respondent is a corporation registered in the State of Ohio.

18. Ohio Admin. Code § 3745-50-10(A)(102) [40 C.F.R. § 260.10 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15)] defines a “person” to include, but not be limited to, an individual, trust, firm, corporation, partnership or association.

19. Since it is a corporation incorporated in and doing business in the State of Ohio, Respondent is a person under RCRA.

20. Respondent performs the following operations at its facility at 2150 Bixby Road, Lockbourne, Ohio (“Facility”): cutting prescriptions into lenses (cut curve into back side of lens), taping the lenses (for surfacing in machines), engraving of lenses (digital surface), polishing of lenses (after machining), application of hard coating to the backside of the lenses, optical inspections, adding blocks to the lenses, edging, de-blocking, cutting lens to the shape of the frames, cleaning process, anti-reflective process, mount line (placing lens into frames), and distribution.

21. At all times relevant to this CAFO, Respondent’s processes at the Facility created solid wastes including, but not limited to: waste solids containing toxic liquid (containing chips of lens from milling and filtration, centrifuged coolant, and cadmium and lead), waste flammable liquids (isopropyl alcohol), waste solids containing flammable liquids (inking mixing and cleaning solids –towels, mixed with solvents), spent tape, spent paper towels and gloves, spent thermal coater and primer flammable liquids, aluminum oxide slurry, waste water interceptor tank sludge (cleanout residue), spent blast media, spent rags, cardboard, lens shavings, generator coolant, and spent alloy dross.

22. On March 8, 2016, the Respondent submitted its 2015 Hazardous Waste Biennial

Report to Ohio EPA for the Facility. On February 2, 2018, the Respondent submitted its 2017 Hazardous Waste Biennial Report for the Facility. Respondent identified itself as a large quantity generator of hazardous waste at the Facility for calendar years 2015 and 2017.

23. The wastes identified in paragraph 21 above were “waste” as that term is defined under Ohio Admin. Code § 3745-51-02 [40 C.F.R. § 261.2] because they were materials that were discarded by being either treated, stored or disposed off-site or stored on-site prior to being sent off-site for treatment, storage or disposal.

24. On March 1, 2017, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (the inspection).

25. At all times relevant to this CAFO, Respondent accumulated, stored, treated or managed hazardous wastes at the Facility with the waste codes including but not limited to D001, D006, D008, and U002 in satellite and storage containers.

26. Respondent characterized the hazardous wastes it generated at the Facility and that are identified above with the characteristic hazardous waste codes D001 (ignitable), D006 (toxic for cadmium), D008 (toxic for lead), and U002 (ignitable for acetone).

27. Pursuant to Ohio Admin. Code § 3745-51-03 [40 C.F.R. § 261.3], a waste is a hazardous waste if it exhibits a characteristic of hazardous waste identified in Ohio Admin. Code § 3745-51-20 to Ohio Admin. Code § 3745-51-24 [40 C.F.R. §§ 261.20 to 261.24] or the waste is listed in Ohio Admin. Code § 3745-51-30 to Ohio Admin. Code § 3745-51-35 [40 C.F.R. §§ 261.30 to 261.35].

28. Pursuant to Ohio Admin. Code § 3745-51-20 to Ohio Admin. Code § 3745-51-24 [40 C.F.R. §§ 261.20 to 261.24], a waste is a characteristic hazardous waste if it is ignitable, corrosive, reactive or toxic as defined:

- a. A waste is a characteristic hazardous waste due to ignitability if it is a liquid with a flash point less than 140 degrees Fahrenheit. It is denoted with the waste code D001.
- b. A waste is a characteristic hazardous waste due to toxicity if the concentration of certain chemical compounds, including but not limited to cadmium and lead and are above the specified regulatory concentrations for each chemical compound. The regulatory concentrations are as follows:
 - (i) cadmium – 1.0 mg/L, with hazardous waste code D006; and
 - (ii) lead – 5.0 mg/L with hazardous waste code D008.

29. The wastes identified above are “hazardous waste” as that term is defined under Ohio Admin. Code § 3745-51-03 and 40 C.F.R. § 261.3 because the Respondent characterized them as hazardous waste and/or they exhibited a hazardous waste characteristic.

30. Ohio Admin. Code § 3745-50-10(A)(54), [40 C.F.R. § 260.10] defines a generator to mean any person, by site, whose act or process produces hazardous waste identified or listed in 3745-51 of the Administrative Code or whose act first causes a hazardous waste to become subject to the hazardous waste rules.

31. On or about June 23, 2008, Respondent submitted an initial Hazardous Waste Notification for the Facility. On or about February 25, 2010, Respondent submitted the 2009 Hazardous Waste Biennial Report to Ohio EPA and initially identified itself as a large quantity generator of hazardous waste.

32. Respondent was a “generator,” of hazardous wastes as defined in Ohio Admin. Code § 3745-50-10(51) and 40 C.F.R. § 260.10 because it either identified itself as a generator and/or did in fact generate hazardous waste and was the person who first produced the hazardous

wastes identified above.

33. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 – 6939e, or the analogous Ohio regulations as part of the applicable state hazardous waste management program for the state of Ohio, or both.

34. Respondent has not submitted Part A of the hazardous waste permit application for the Facility.

35. The State of Ohio has not issued a permit to Respondent to treat, store, or dispose of hazardous waste at the Facility.

36. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the Facility.

37. On September 29, 2017, U.S. EPA issued a Notice of Violation to Respondent alleging specified violations of RCRA at the Facility (the “Notice of Violation”).

38. On March 8, 2017, March 13, 2017, May 22, 2017, July 12, 2017, October 6, 2017, October 12, 2017, October 20, 2017, and October 31, 2017, Respondent submitted to U.S. EPA written responses to the inspection and to the Notice of Violation.

Count 1

Operating without a permit or interim status by storing hazardous waste for more than ninety days; and failure to meet all the applicable conditions necessary to exempt it from the requirement to obtain a permit for generators of hazardous waste.

39. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in this paragraph.

40. Except as otherwise provided, a large quantity generator may, for 90 days or less, accumulate and/or treat hazardous waste that is generated on-site without an Ohio hazardous

waste permit unless the generator has been granted an extension of the 90-day period, provided that the generator complies with, among other things, the conditions of Ohio Admin. Code § 3745-52-34(A) and (B) [40 C.F.R. § 262.34(a) and (b)].

41. If the conditions of Ohio Admin. Code § 3745-52-34 and 40 C.F.R. § 262.34 are not met, then the generator must apply for an operating permit under Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

42. During the inspection, at a “flammable cabinet” at the Maintenance Hazardous Waste Storage Area, the inspectors observed nine 2-gallon containers and three 5-gallon containers that contained waste. Respondent stated that the waste, contained in the 2-gallon containers and the 5-gallon containers, was thermal coating hazardous waste and carried a D001 waste code, and had accumulated since the second week of November 2016. Respondent sent correspondence (email) dated March 8, 2017, that documented that the hazardous waste accumulated in the above-referenced containers was shipped off-site on March 7, 2017 (stored for a total of 109 days – 19 days over the allowed limit). Respondent was not granted an extension of the 90-day period.

43. Respondent’s failure to ship off-site its generated waste within 90 days without a permit as alleged in paragraph 42 violated Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

44. During the inspection, at another “flammable cabinet” at the Maintenance Hazardous Waste Storage Area, the inspectors observed one 55-gallon drum labeled as “Hazardous Waste,” “Waste Flammable Liquids,” and “D001,” which was dated 12/5/16, and was closed. Respondent sent correspondence (email) dated March 8, 2017, that documented that the hazardous waste accumulated in the above-referenced container was shipped off-site on

March 7, 2017 (stored for a total of 93 days – 3 days over the allowed limit). Respondent was not granted an extension of the 90-day period.

45. Respondent's failure to ship off-site its generated waste within 90 days without a permit as alleged in paragraph 44 violated Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

46. During the inspection, at another "flammable cabinet" at the Maintenance Hazardous Waste Storage Area, the inspectors observed three 2 ½ -gallon containers. Respondent stated that the waste, contained in the 2 ½-gallon containers, was thermal coating and primer hazardous waste and carried a D001 waste code. Two of the three 2 ½-gallon containers were dated 6/13. Respondent sent correspondence (email) dated March 8, 2017, that documented that the hazardous waste accumulated in the above-referenced containers was shipped off-site on March 7, 2017 (stored for at least 268 days – 178 days over the allowed limit.) Respondent was not granted an extension of the 90-day period.

47. Respondent's failure to ship off-site its generated waste within 90 days without a permit as alleged in paragraph 46 violated Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

48. Ohio Admin. Code § 3745-50-10(A)(127) [40 C.F.R. § 260.10] defines "storage" to mean the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

49. Under Ohio Admin. Code § 3745-52-34(A)(2) [40 C.F.R. § 262.34(a)(2)], a generator must clearly mark, and make visible for inspection, each container holding hazardous waste with the date upon which each period of accumulation begins.

50. During the inspection of the Maintenance Hazardous Waste Storage Area, the

inspectors observed sixteen 55-gallon drums situated on pallets. The labels on some of the drums were not visible for inspection; facility personnel had to move the drums so that the inspectors could observe all of the drums' labels.

51. Respondent's failure to clearly mark, and make visible for inspection, each container holding hazardous waste with the date upon which each period of accumulation begins as alleged in paragraph 50 violated Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

52. During the inspection of the Maintenance Hazardous Waste Storage Area, the inspectors observed one 55-gallon drum that was located inside of a "flammable cabinet." The drum was labeled as "Hazardous Waste," was not marked with an accumulation start date, and was closed. Respondent stated that the accumulation start date for the drum was February 17, 2017.

53. Respondent's failure to clearly mark, and make visible for inspection, the container holding hazardous waste with the date upon which each period of accumulation begins as alleged in paragraph 52 violated Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

54. During the inspection of the Maintenance Hazardous Waste Storage Area, in one "flammable cabinet" the inspectors observed nine 2-gallon containers and three 5-gallon containers that contained waste. Respondent stated that the waste in the twelve containers was thermal coating hazardous waste that carried a D001 waste code and that had accumulated since the second week of November 2016. None of the containers was marked with an accumulation start date.

55. Respondent's failure to clearly mark, and make visible for inspection, each

container holding hazardous waste with the date upon which each period of accumulation begins as alleged in paragraph 54 violated Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

56. During the inspection of the Maintenance Hazardous Waste Storage Area, in another “flammable cabinet” the inspectors observed ten full 5-gallon containers and three 2 ½ -gallon containers that contained waste. Respondent stated that the waste in the thirteen containers was thermal coating and primer hazardous waste that carried a D001 waste code. None of the 5-gallon containers and one of the three 2 ½ gallon containers were marked with an accumulation start date.

57. Respondent’s failure to clearly mark, and make visible for inspection, each container holding hazardous waste with the date upon which each period of accumulation begins as alleged in paragraph 56 violated Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

58. Under Ohio Admin. Code § 3745-52-34(A)(3) [40 C.F.R. § 262.34(a)(3)], a large quantity generator must label or clearly mark each container holding hazardous waste with the words “Hazardous Waste.”

59. During the inspection of the Maintenance Hazardous Waste Storage Area, in another “flammable cabinet” the inspectors observed nine 2-gallon containers and three 5-gallon containers that contained waste. Respondent stated that the waste in the twelve containers was thermal coating hazardous waste that carried a D001 waste code, and had accumulated since the second week of November 2016. None of the twelve containers were labeled as “Hazardous Waste.”

60. Respondent’s failure to label hazardous waste storage containers with the words

“Hazardous Waste” as alleged in paragraph 59 violated Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

61. During the inspection of the Maintenance Hazardous Waste Storage Area, in another “flammable cabinet” the inspectors observed ten full 5-gallon containers and three full 2 ½ -gallon containers. Respondent stated that the waste in the thirteen containers was thermal coating and primer hazardous waste and carried a D001 waste code. At least one of the 5-gallon containers was labeled as “Coating Waste.” At least one of the 5-gallon containers was labeled as “Primer Waste” and “PR 670.” None of the thirteen containers were labeled as “Hazardous Waste.” One of the 2 ½-gallon containers was not marked with an accumulation start date, was labeled as “PDR 71 x 8,” and had a sticker with a poison symbol attached to the container. The other two containers were labeled as “PDR 71 x 8” and “Waste” and as “PR 670” and “Waste,” respectively.

62. Respondent’s failure to label hazardous waste storage containers with the words “Hazardous Waste” as alleged in paragraph 61 violated Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

63. Under Ohio Admin. Code § 3745-52-34(C)(1) [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as fifty-five gallons of hazardous waste or one quart of acutely hazardous waste listed in Ohio Admin. Code rule 3745-51-31 or paragraph (E) of rule 3745-51-33 of the Administrative Code in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit and without complying with paragraph (A) or (D) of this rule provided the generator: (a) complies with rules 3745-66-71, 3745-66-72, and paragraph (A) of rule 3745-66-73 of the Ohio Admin. Code; and (b) marks the containers either with the words

"Hazardous Waste" or with other words that identify the contents of the containers.

64. On at least March 1, 2017, Respondent stored, accumulated or managed in containers in various satellite accumulation areas (SAA) wastes it identified above in paragraph 21. It identified the wastes with labeling of the words "Hazardous Waste" and "Flammable Liquid" and/or it otherwise indicated that the wastes were hazardous wastes. These containers and the wastes, included but were not limited to the following:

- a. During inspection of the Hard Coating area, the inspectors observed eight separate SAAs. All eight SAAs consisted of one 5-gallon bucket. Two of the eight buckets were observed as empty. The six buckets that contained hazardous waste flammable liquid (separate SAAs) were all labeled as "Hazardous Waste" and "Flammable Liquid," and were all open. No waste was being added or removed from the six buckets;
- b. During inspection of the Pad Print area, the inspectors observed one SAA that consisted of one 10-gallon container. The 10-gallon container was not labeled as "Hazardous Waste" or with words that identified the contents and was closed.

65. Respondent's failure to keep closed and label hazardous waste SAA containers with the words "Hazardous Waste" as alleged in paragraph 64 violated Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

66. At times relevant to this CAFO, Respondent accumulated hazardous waste in containers over 90 days and had not been granted an extension to accumulate hazardous waste for more than 90 days.

67. By accumulating hazardous waste for more than 90 days, Respondent became an

operator of a storage facility and was required to obtain a hazardous waste storage license that permitted it to store hazardous wastes. Respondent failed to apply for such a permit as required under Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)].

68. As a result of its failure to meet all of the applicable conditions for the generator exemption and accumulating waste for more than 90 days without an extension, Respondent was required to obtain a permit for such storage as provided by Ohio Admin. Code § 3745-52-34(A), (B) and (C) [40 C.F.R. § 262.34(a), (b) and (c)].

69. Therefore, Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D), and 3745-52-34(C)(1) [40 C.F.R. §§ 262.34(c)(1), 270.1(c), and 270.10(a) and (d)].

Count 2

Failure to Comply with Training Requirements

70. Complainant incorporates paragraphs 1 through 69 of this CAFO as though set forth in this paragraph.

71. Under Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-16(C) and (D)(4) [40 C.F.R. §§ 262.34(a)(4) and 265.16(c) and (d)(4)], a generator may, for ninety days or less, accumulate or conduct treatment of hazardous waste that is generated on-site without an Ohio hazardous waste permit, provided the generator conducts annual training review for its employees and retains records of that training.

72. Facility personnel must take part in an annual review of the initial training required in paragraph (C) of Ohio Admin. Code § 3745-65-16 during each period from January first to

December thirty-first. The review must occur within fifteen months after the previous review. Ohio Admin. Code § 3745-65-16(D) requires the owner or operator maintain at the facility records that document that the training or job experience required under paragraphs (A), (B), and (C) of this rule has been given to, and completed by, facility personnel.

73. During the inspection of records, the inspectors reviewed Respondent's RCRA training documentation. No records on RCRA training for years 2014 and 2015 were available for review at the Facility. Respondent sent correspondence dated May 22, 2017, indicating that RCRA training for company personnel was administered by the company's previous Environmental Manager in 2014-2015, but due to him leaving the company, Respondent was unable to locate hard copies of the training sign-off sheets.

74. Respondent's failure to provide training and retain records as alleged in paragraph 73 violated Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-16(C) and (D)(4) [40 C.F.R. §§ 262.34(a)(4) and 265.16(c) and (d)(4)].

Count 3

Failure to Maintain Aisle Space

75. Complainant incorporates paragraphs 1 through 74 of this CAFO as though set forth in this paragraph.

76. Under Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-35 [40 C.F.R. §§ 262.34(a)(4) and 265.35], a generator may, for ninety days or less, accumulate or conduct treatment of hazardous waste that is generated on-site without an Ohio hazardous waste permit, provided the generator maintains aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of the above-

mentioned purposes.

77. During the inspection at the Maintenance Hazardous Waste Storage Area, the inspectors observed sixteen 55-gallon drums situated on pallets. The labels on some of the drums were not visible for inspection, so Facility personnel had to move the drums so that the inspectors could observe all of the drums' labels. The required aisle space was not sufficiently maintained in this area.

78. Respondent's failure to maintain aisle space as alleged in paragraph 77 violated Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-35 [40 C.F.R. §§ 262.34(a)(4) and 265.35].

Count 4

Failure to Make Arrangements and Familiarize the Local Authorities With Types of Wastes Handled and Potential Needs for Services at the Facility; and Failure to Implement and Submit a Complete Contingency Plan

79. Complainant incorporates paragraphs 1 through 78 of this CAFO as though set forth in this paragraph.

80. Under Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-37(A) [40 C.F.R. §§ 262.34(a)(4) and 265.37(a)], a generator may, for ninety days or less, accumulate or conduct treatment of hazardous waste that is generated on-site without an Ohio hazardous waste permit, provided the generator shall attempt to make the following arrangements, as appropriate for the type of waste handled at the facility and the potential need for the services of the following organizations: (1) arrangements to familiarize police, fire departments, and local emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working,

entrances to roads inside the facility, and possible evacuation routes; (2) where more than one police and fire department may respond to an emergency, arrangements designating primary emergency authority to a specific police and a specific fire department and arrangements with any others to provide support to the primary emergency authority; (3) arrangements with local emergency response teams, emergency response contractors, and equipment suppliers; and (4) 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 of hazardous waste or hazardous waste constituents at the facility.

81. During the inspection, the inspectors reviewed the Facility's contingency plan. The contingency plan contained no description of arrangements with local authorities (except for the fire department), and there was no other indication of such arrangements.

82. Respondent's failure to attempt to make arrangements with local authorities (except for the fire department) as alleged in paragraph 81 violated Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-37(A) [40 C.F.R. §§ 262.34(a)(4) and 265.37(a)].

83. Under Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-52(C) [40 C.F.R. §§ 262.34(a)(4) and 265.52(c)], the contingency plan shall describe arrangements with local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to rule 3745-65-37 of the Administrative Code.

84. During the inspection of records, the inspectors reviewed the Facility's contingency plan. The contingency plan failed to describe arrangements with local authorities.

85. Respondent's failure to describe arrangements with local authorities in its contingency plan as alleged in paragraph 84 violated Ohio Admin. Code §§ 3745-52-34(A)(4)

and 3745-65-52(C) [40 C.F.R. §§ 262.34(a)(4) and 265.52(c)].

86. Under Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-52(D) [40 C.F.R. §§ 262.34(a)(4) and 265.52(d)], the contingency plan shall list names, home addresses, and home or cellular telephone numbers of all persons qualified to act as emergency coordinator (see rule 3745-65-55 of the Administrative Code), and this list shall be kept up to date. Where more than one person is listed, one person shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

87. During the inspection, the inspectors reviewed the Facility's contingency plan. No home addresses were listed in the contingency plan for the emergency coordinators.

88. Respondent's failure to list the home addresses for the emergency coordinators in its contingency plan as alleged in paragraph 87 violated Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-52(D) [40 C.F.R. §§ 262.34(a)(4) and 265.52(d)].

89. Under Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-52(E) [40 C.F.R. §§ 262.34(a)(4) and 265.52(e)], the contingency plan shall include a list of all emergency equipment at the facility [such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment], where this equipment is required. This list shall be kept up to date. In addition, the contingency plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

90. During the inspection, the inspectors reviewed the Facility's contingency plan. The Plan did not describe the types of fire extinguishers used at the Facility.

91. Respondent's failure to describe the types of fire extinguishers used at its Facility, in its contingency plan as alleged in paragraph 90 violated Ohio Admin. Code §§ 3745-52-34(A)(4)

and 3745-65-52(E) [40 C.F.R. §§ 262.34(a)(4) and 265.52(e)].

92. Under Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-53(B) [40 C.F.R. §§ 262.34(a)(4) and 265.53(b)], a copy of the contingency plan and all revisions to the plan shall be submitted to all local police departments, fire departments, hospitals, and local emergency response teams described in the contingency plan pursuant to paragraph (C) of rule 3745-65-52 of the Administrative Code, that may be requested to provide emergency services.

93. During the inspection, the inspectors reviewed the Facility's contingency plan. The contingency plan had not been submitted to all of the required authorities. Respondent stated that the plan had only been sent to the fire department.

94. Respondent's failure to submit its contingency plan to all of the required authorities (except the fire department) as alleged in paragraph 93 violated Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-53(B) [40 C.F.R. §§ 262.34(a)(4) and 265.53(b)].

Count 5

Failure to Conduct a Waste Determination

95. Complainant incorporates paragraphs 1 through 94 of this CAFO as though set forth in this paragraph.

96. Ohio Admin. Code § 3745-52-11 [40 C.F.R. § 262.11] requires any person who generates a "waste" to determine if that waste is a hazardous waste.

97. During the inspection, at the Facility's Edging area, the inspectors observed four dust collectors, each having two containers for the collector. Respondent stated that no waste profile had been developed for the waste dust, and the waste dust is disposed of in the trash.

98. Respondent failed to make the waste determination for the waste as alleged in paragraph 97 in violation of Ohio Admin. Code § 3745-52-11, [40 C.F.R. § 262.11].

Count 6

Failure to Keep Copies of Manifests

99. Complainant incorporates paragraphs 1 through 98 of this CAFO as though set forth in this paragraph.

100. Under Ohio Admin. Code § 3745-52-40(A) [40 C.F.R. § 262.40(a)], the generator must keep a copy of each manifest signed in accordance with paragraph (A) of rule 3745-52-23 of the Administrative Code for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years after the date the waste was accepted by the initial transporter.

101. During the inspection, the inspectors reviewed the Facility's manifests. Two manifests were missing signed TSDf (EQ Detroit, Inc.) copies (manifest # 015974111 JJK – shipped date 9/19/16; and manifest # 015522947 JJK – shipped date 1/15/16).

102. Respondent's failure to keep copies of fully signed manifests as alleged in paragraph 101 violated Ohio Admin. Code § 3745-52-40(A) [40 C.F.R. § 262.40(a)].

Count 7

Failure to Timely File Hazardous Waste Biennial Report

103. Complainant incorporates paragraphs 1 through 102 of this CAFO as though set forth in this paragraph.

104. Ohio Admin. Code § 3745-52-41(A) and (B) [40 C.F.R. § 262.41(a) and (b)], require a generator who ships any hazardous waste off-site to prepare and submit to Ohio EPA the "Hazardous Waste Biennial Report" by March first of each even numbered year.

105. Respondent was required to submit a Hazardous Waste Biennial Report for calendar year 2015 to Ohio EPA by March 1, 2016. The 2015 Hazardous Waste Biennial Report was

submitted to Ohio EPA on March 8, 2016.

106. Respondent's failure to timely submit its 2015 Hazardous Waste Biennial Report as alleged in paragraph 105 violated Ohio Admin. Code § 3745-52-41(A) and (B) [40 C.F.R. § 262.41(a) and (b)].

Count 8

Failure to Label Container of Used Oil

107. Complainant incorporates paragraphs 1 through 106 of this CAFO as though set forth in this paragraph.

108. Under Ohio Admin. Code § 3745-279-22(C)(1) [40 C.F.R. § 279.22(c)(1)], containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

109. During the inspection, at the Facility's AR Pump Room, the inspectors observed one 55-gallon drum, located inside of a "flammable cabinet," that contained used oil (as stated by Respondent). The drum was not labeled as "Used Oil."

110. Respondent's failure to label the container as "Used Oil" as alleged in paragraph 109 violated Ohio Admin. Code § 3745-279-22(C)(1) [40 C.F.R. § 279.22(c)(1)].

Civil Penalty

111. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$35,000. In determining the penalty amount, Complainant considered EPA's RCRA Civil Penalty Policy, dated June 23, 2003, the seriousness of the violations and Respondent's good faith efforts to comply with the applicable requirements and cooperation in resolving this matter.

112. Within 30 days after the effective date of this CAFO, Respondent must pay a

\$35,000 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must state "In re: Luxottica of America Inc. Lockbourne Facility" and the docket number of this

CAFO.

113. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Bryan Gangwisch (ECR-17J)
Land and Chemicals Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Andre Daugavietis (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

114. This civil penalty is not deductible for federal tax purposes.

115. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

116. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

117. Respondent certifies that it is complying with the above-cited provisions of RCRA, 42 U.S.C. §§ 6901-6992k, and the regulations at Ohio Admin. Code §§ 3745-50 – 3745-279 (40 C.F.R. Parts 260 – 279).

118. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: daugavietis.andre@epa.gov (for Complainant), and kmcmurray@fbtlaw.com (for Respondent). The parties waive their right to service by the

methods specified in 40 C.F.R. § 22.6.

119. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

120. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

121. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

122. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

123. The terms of this CAFO bind Respondent, its successors, and assigns.

124. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

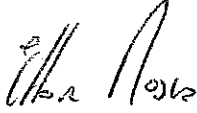
125. Each party agrees to bear its own costs and attorney's fees in this action.

126. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Luxottica of America Inc.
Docket No. RCRA-05-2019-0017

Luxottica of America Inc., Respondent

9/20/2019
Date



Name: Ettore Mosca
Title: SVP and GM, Global Rx Operations
Luxottica of America Inc.

In the Matter of:
Luxottica of America Inc.
Docket No. RCRA-05-2019-0017

United States Environmental Protection Agency, Complainant

9-27-19
Date

Sara Brunema

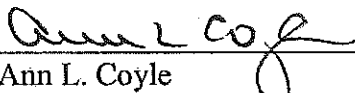
Michael D. Harris
Acting Division Director
Enforcement and Compliance Assurance Division

In the Matter of:
Luxottica of America Inc.
Docket No. RCRA-05-2019-0017

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/27/19
Date


Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Luxottica of America Inc.
Docket No. RCRA-05-2019-0017

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [RCRA 05 2019 0017], which was filed on 9/30/2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Luxottica of America Inc.

Copy by E-mail to
Attorney for Complainant: Andre Daugavietis
daugavietis.andre@epa.gov

Copy by E-mail to
Attorney for Respondent: Kevin McMurray
kmcurray@fbtlaw.com

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: September 30, 2019



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5