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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING OFFICE

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket Nos.
)	RCRA-09-2011-0012
)	TSCA -09-2011-0014
Fluoresco Lighting and Signs)	DETERMINATION OF VIOLATION
EPA ID No. AZR000045757)	COMPLIANCE ORDER AND
)	NOTICE OF RIGHT TO
<u>Respondent.</u>)	REQUEST A HEARING

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); Section 15 of the Toxic Substances Control Act, ("TSCA"), 15 U.S.C. § 2614; and 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 Code of Federal Regulations ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Fluoresco Lighting and Signs ("Fluoresco" or "Respondent").
2. Respondent owns and operates a facility located at 5505 S. Nogales Hwy. in Tucson, Arizona 85126 ("Facility"). The Facility is one of 11 facilities that Respondent operates that design, fabricate, install or maintain custom neon, fluorescent, LED and fiber-optic signs. The Tucson Facility manages hazardous waste, polychlorinated biphenyl ("PCB") waste and non-hazardous industrial wastes.
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 Fluoresco has committed the following violations of RCRA: (1) storage of hazardous waste without a permit as required by AAC R18-8-270.A [see also 40 C.F.R. 270.1(c)], (2) treatment of hazardous waste without a permit as required by AAC R18-8-270.A [see also 40 C.F.R. 270.1(c)], (3) failure to close containers of hazardous waste, as required by AAC R18-8-265.A [see also 40 C.F.R. 262.34(a)(1)(i), (c)(1)(i), (d)(2)(a), 265.173], (4) failure to make a hazardous waste determination, as

required by AAC R18-8-262.A [*see also* 40 C.F.R. 262.11], (5) failure to provide required aisle space in the hazardous waste storage area, as required by AAC R18-8-265.A [*see also* 40 C.F.R. 262.34(d)(2), 40 C.F.R. 265.35], and (6) failure to perform weekly inspections of containers storing hazardous waste, as required by AAC R18-8-265.A [*see also* 40 C.F.R. 265.174, 262.34(d)(2)]. These are all in violation of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto. Respondent has also violated Section 15 of TSCA, 15 U.S.C. § 2614, by failing to provide a manifest to accompany a shipment of waste containing PCBs as required by 40 C.F.R. § 761. This Complaint seeks to assess a civil penalty that Respondent must pay for violations alleged herein, and compliance with the compliance tasks described herein.

B. JURISDICTION

4. EPA is enforcing Arizona hazardous waste management program requirements as approved and authorized by the United States. On October 7, 1991, the State of Arizona received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. All citations to the "A.A.C." refer to the Arizona Administrative Code, contained in Title 18, Chapter 8, Department of Environmental Quality Waste Management, Article 2, Hazardous Waste, which adopt 40 C.F.R. §§ 124, 260 through 266, 268, 270 and 273, or parts thereof, by reference. Citations to "A.R.S." refer to Arizona Revised Statutes. The State of Arizona has been authorized for all the regulations referenced in this Complaint.¹
4. Respondent is a "person" as defined in A.A.C. R18-8-260 [*see also* 40 C.F.R. § 260.10] and 40 C.F.R. § 761.3.
5. Respondent is the "operator" of a facility as defined in A.A.C. R18-8-260 [*see also* 40 C.F.R. § 260.10].
6. The Facility's EPA Identification Number is AZR000045757.
7. Respondent's hazardous waste manifests indicate that it generates more than 100 kilograms ("kg") and less than 1000 kg of hazardous waste in a month and is therefore a small quantity "generator" of hazardous waste as defined in A.A.C. R18-8-260 [40 C.F.R. § 260.10].
8. Respondent is or has been engaged in "storage" of hazardous waste as defined in A.A.C. R18-8-260 [*see also* 40 C.F.R. § 260.10], and PCBs as defined in 40 C.F.R. § 761.3.

¹ Citations are to Arizona requirements, with corresponding federal citations provided in brackets.

9. Respondent generates and accumulates, or has generated and accumulated, materials that are "solid wastes" as defined in A.A.C. R-18-8-260-261 [see also 40 C.F.R. §§ 260.10 and 261.2].
10. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in A.A.C. R18-8-260.10, -R18-8-261.3 [see also RCRA § 1004(5), 42 U.S.C. § 6903, and 40 C.F.R. §§ 260.10 and 261.3], used oil and PCBs as defined in 40 C.F.R. § 761.3. These hazardous wastes include, but are not limited to, paint waste (D001, F003, F005), solvents (D001 and F005), and waste and/or broken fluorescent lamps.
11. On February 24, 2010, an unannounced RCRA Compliance Evaluation Inspection ("CEI") was conducted by inspectors from the EPA. The purpose of the inspection was to determine Fluoresco's compliance with hazardous waste regulations in 40 C.F.R. Subtitle C, Parts 261-265, 268, 273 and 279, and the regulations adopted by the Arizona authorized program. Based upon the findings made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Fluoresco had violated the Arizona Hazardous Waste Management Act, A.R.S. 49-901 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.
12. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
13. A violation of Arizona's authorized hazardous waste program constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates Arizona's authorized hazardous waste program 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 to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Waste Management Division.
16. Pursuant to Section 6(c) of TSCA, 15 U.S.C. § 2605(c), EPA promulgated regulations governing PCBs at 40 C.F.R. Part 261.
17. EPA has issued comprehensive regulations governing manufacturing, processing,

distribution, and disposal of PCBs at 40 C.F.R. Part 761. Part 761 applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items.

18. Under 40 C.F.R. § 761.3, “PCB” or “PCBs” means “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. . . .”
19. Under 40 C.F.R. § 761.3, “PCB Items” means “any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has a part of it any PCB or PCBs.”
20. Section 16(a) of TSCA, 15 U.S.C. § 2615(a) authorizes the EPA Administrator to issue orders assessing a penalty for any violation of TSCA, Section 2 of TSCA *et seq.*, 15 U.S.C. § 2601 *et seq.*
21. The Administrator has delegated the authority under Section 16(a) of TSCA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT I

Storage of Hazardous Waste Without a Permit

22. Paragraphs 1 through 21 above are incorporated herein by this reference as if they were set forth here in their entirety.
23. A.A.C. R18-8-262.A states that a generator who generates greater than 100 kg but less than 1000 kg of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or grant of interim status provided that certain conditions are met. Those conditions include:
 - a. a requirement that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and that each the container is labeled or marked clearly with the words “hazardous waste” [See also 40 C.F.R. § 262.34(d)];
 - b. that a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste at or near any point of generation provided certain conditions are met, including marking the containers with the words “hazardous waste” or words that identify the contents of the containers. [See also 40 C.F.R. § 262.34(c)(1)(ii)]; and

- c. that a generator provide training to ensure that its employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies. [*See also* 40 C.F.R. § 262.34(d)(5)(iii).
24. At the time of the February 23, 2010 CEI, there were several containers of used oil that were labeled “waste oil” or “old oil.”
25. At the time of the February 23, 2010 CEI, there were containers of hazardous waste that were not labeled, or were labeled hazardous waste without accumulation start dates.
26. At the time of the February 23, 2010 CEI, there were at least two 55-gallon drums of hazardous waste that had been stored over 180 days. These hazardous waste drums were dated November 1, 2008 and October 1, 2008. A third drum had a faded label that appeared to be dated September 2007.
27. At the time of the February 23, 2010 CEI, there were ten 55-gallon drums, one 30-gallon drum, ten 5-gallon containers, fifteen 1-gallon containers and one 1-quart container containing hazardous waste in the hazardous waste storage area that were not properly labeled.
28. At the time of the February 23, 2010 CEI, there were five 55-gallon drums and one 1-quart container containing paint wastes in a satellite accumulation area that were not properly labeled. The paint wastes were hazardous wastes.
29. Fluoresco’s failure to label hazardous waste containers in accordance with the requirements set forth or referenced by A.A.C. R18-8-262.A subject it to the permit requirements of A.A.C. R18-8-270.A [*see also* 40 C.F.R. §§ 262.34 and 270.1].
30. Fluoresco’s storage of hazardous waste in excess of 180 days subjects it to the permit requirements of A.A.C. R18-8-270A. [*See also* 40 C.F.R. 270.1(c)].
31. Therefore, EPA alleges that Fluoresco stored hazardous waste without a permit, a violation of A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 270.1(c)].

COUNT II

Treatment of Hazardous Waste Without a Permit

32. Paragraphs 1 through 31 above are incorporated herein by this reference as if they were set forth here in their entirety.
33. A.A.C. R18-8-270A prohibits treatment of hazardous waste without a permit. [*See also* 40 C.F.R. 270.1(c)].

34. At the time of the February 23, 2010 CEI, there were several containers of waste paint that were open and drying.
35. The waste paint is a hazardous waste pursuant to 40 C.F.R. 261.10 because it is ignitable.
36. Drying is "treatment" pursuant to 40 C.F.R. 260.10, which defines "treatment" as "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous, safer to transport, store, or dispose of; of amenable for recovery, amenable for storage, or reduced in volume."
37. Therefore, EPA alleges that Fluoresco violated A.A.C. 270A. by treating hazardous waste without a permit. [*See also* 40 C.F.R. 270.1(c)].

COUNT III

Failure to Close Containers of Hazardous Waste

38. Paragraphs 1 through 34 above are incorporated herein by this reference as if they were set forth here in their entirety.
39. A.A.C. R18-8-265 requires that containers holding hazardous waste must be closed during storage, except when it is necessary to add or remove waste [*see also* 40 C.F.R. § 265.173].
40. At the time of the February 23, 2010 CEI, there were several containers of hazardous waste in the hazardous waste storage area and satellite accumulation areas that were open at times when waste was not being added or removed.
41. At the time of the February 23, 2010 CEI, containers of paint waste were left open in the outdoor paint booth.
42. At the time of the February 23, 2010 CEI, a container of waste paint attached to a mobile cart was open.
43. At the time of the February 23, 2010 CEI, drums in the empty drum storage area were open with liquid in them.
44. At the time of the February 23, 2010 CEI, and containers of solvent waste in the hazardous waste storage area were open.

45. Therefore, EPA alleges that Respondent has violated A.A.C. R 262.34 [*see also* 40 C.F.R. § 262.34(d)(2) and 40 C.F.R. § 265.173].

COUNT IV

Failure to Make a Hazardous Waste Determination

46. Paragraphs 1 through 45 above are incorporated herein by this reference as if they were set forth here in their entirety.
47. A.A.C. R18-8-262 requires that a generator of solid waste must determine if that waste is a hazardous waste [*see also* 40 C.F.R. § 262.11].
48. At the time of the February 23, 2010 CEI, Respondent's facility included several containers of solid waste for which Respondent's representatives were unable to identify the contents.
49. At the time of the February 23, 2010 CEI, on one side of the paint mixing room, there was one 55-gallon drum full of liquid, labeled hazardous waste, eight unlabeled 1-gallon containers, one 55-gallon drum of sand-like material in the hazardous waste storage area, five 55-gallon drums of paint waste in the empty storage container area, and three 5-gallon containers of paint thinner for which no hazardous waste determination had been made.
50. Therefore, EPA alleges that Respondent failed to comply with the requirements of A.A.C. R 18-8-262 [*See also* 40 C.F.R. § 262.11].

COUNT V

Failure to Provide Required Aisle Space

51. Paragraphs 1 through 52 above are incorporated herein by this reference as if they were set forth here in their entirety.
52. A.A.C. R18-9-265 requires that the owner or operator of all hazardous waste facilities must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in any emergency, unless aisle space is not needed for any of these purposes. [*See also* 40 C.F.R. §§ 40 C.F.R. 265.35, 262.34(d)(4);].

53. At the time of the February 23, 2010 CEI, there was inadequate or no aisle space between containers in the hazardous waste storage area. There were several small containers between the 55-gallon drums that did not allow for access between the drums and containers.
54. Therefore, EPA alleges that Respondent failed provide aisle space as required by A.A.C. R18-8-265. [*See also* 40 C.F.R. §§ 265.35, 262.34(d)(4)-(5)].

COUNT VI

Failure to Perform Weekly Inspections

55. Paragraphs 1 through 54 above are incorporated herein by this reference as if they were set forth here in their entirety.
56. A.A.C. R18-8-265 requires that, at least weekly, the owner or operator of a facility must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. [*See also* 40 C.F.R. §§ 265.174, 262.34(d)(2)].
57. At the time of the February 23, 2010 CEI, Respondent was not inspecting the areas with containers on at least a weekly basis.
58. At the time of the February 23, 2010 CEI, the facility representative informed the inspectors that inspections were performed twice a month in 2008 and 2009, not weekly.
59. At the time of the February 23, 2010 CEI, several of the containers present were rusted, corroded, or open, including one open unlabeled 55-gallon drum that was full of unidentified liquid.
60. Therefore, EPA alleges that Respondent failed to perform inspections at least weekly as required by A.A.C. R18-8-265 [*See also* 40 C.F.R. §§ 265.174, 262.34(d)(2)].

COUNT VII

Failure to Manifest PCB Waste

61. Paragraphs 1 through 60 above are incorporated herein by this reference as if they were set forth here in their entirety.
62. On or about November 16, 2010, Respondent transported, or offered for transport, to Waste Management Lamp Tracker, Inc. (Lamp Tracker), a drum of “fluorescent light ballasts” that contained “PCBs” as those terms are defined in 40 C.F.R. § 761.3.

63. The fluorescent light ballasts containing PCBs constitute "PCB waste" as that term is defined in 40 C.F.R. § 761.3.
64. At all times relevant to this Complaint, Respondent is and was a "generator of PCB waste" as that term is defined in 40 C.F.R. § 761.3.
65. A generator who relinquishes control over PCB wastes by transporting, or offering for transport, PCB waste for commercial off-site storage or disposal shall prepare a manifest on EPA form 8700-22, specifying identifying information about the PCB waste. See 40 C.F.R. § 761.207(a).
66. Respondent did not prepare a manifest for the fluorescent light ballasts containing PCBs when it transported them, or offered them for transport, to Lamp Tracker for disposal.
67. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.207(a) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

D. CIVIL PENALTY

68. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, *see* 61 Fed. Reg. 69360 (Dec. 31, 1996), and the Civil Monetary Penalty Inflation Adjustment Rule, *see* 69 Fed. Reg. 7121 (Feb. 13, 2004), authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$37,500) for violations that occur after Jan. 11, 2009. 73 Fed. Reg. 75340 (Dec. 11, 2008). Therefore, Complainant requests that the Administrator assess a civil penalty against Respondent of up to \$37,500 per day, as appropriate, for each day during which a violation cited in the above outlined RCRA Counts continued up to (and including) February 23, 2010.
69. Section 16 of TSCA, 15 U.S.C. § 2615, as adjusted by the Debt Collection Improvement Act of 1996, *see* 61 Fed. Reg. 69360 (Dec. 31, 1996), and the Civil Monetary Penalty Inflation Adjustment Rule, *see* 69 Fed. Reg. 7121 (Feb. 13, 2004), authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$37,500) for violations that occur after Jan. 11, 2009. 73 Fed. Reg. 75340 (Dec. 11, 2008). Therefore, Complainant requests that the Administrator assess a civil penalty against Respondent of up to \$37,500 per day, as appropriate, for each day during which a violation cited in the above outlined TSCA Count continued up to (and including) February 23, 2010.

Count I – Storage of Hazardous Waste Without a Permit

This violation continued since at least April 1, 2009, when Respondent was storing hazardous

waste for over 180 days, until February 23, 2010.

This violation presents a major potential for harm to the environment, and a major deviation from the regulatory requirement.

A major potential for harm to the environment and/or the regulatory program means that the violation poses or may pose a substantial risk of exposure to humans or other environmental receptors to hazardous waste or constituents and/or may have a substantial adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A major deviation from the regulatory requirement means that the violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

Count II – Treatment of Hazardous Waste Without a Permit

This violation continued for at least one day, February 23, 2010. This violation presents a moderate potential for harm to the environment and/or the regulatory program, and a minor deviation from the regulatory requirement.

A moderate potential for harm to the environment or the regulatory program means that the violation poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents or the actions have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A minor deviation from the regulatory requirement means that the violator deviates somewhat from the regulatory or statutory requirements but most (or all important aspects) of the requirements are met.

Count III – Failure to Close Containers of Hazardous Waste

This violation continued for at least one day, February 23, 2010. This violation presents a moderate potential for harm to the environment and/or the regulatory program, and a minor deviation from the regulatory requirement.

A moderate potential for harm to the environment or the regulatory program means that the violation poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents or the actions have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A minor deviation from the regulatory requirement means that the violator deviates somewhat

from the regulatory or statutory requirements but most (or all important aspects) of the requirements are met.

Count IV – Failure to Make a Hazardous Waste Determination

This violation continued for at least one day, February 23, 2010. This violation presents a moderate potential for harm to the environment and/or the regulatory program, and a moderate deviation from the regulatory requirement.

A moderate potential for harm to the environment or the regulatory program means that the violation poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents or the actions have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A moderate deviation from the regulatory requirement means that the violator significantly deviates from requirements of the regulation or statute but some of the requirements are implemented as intended.

Count V - Failure to Provide Required Aisle Space

This violation continued for at least one day, February 23, 2010.

This violation presents a moderate potential for harm to the environment and is a moderate deviation from the regulatory requirement.

A moderate potential for harm to the environment or the regulatory program means that the violation poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents or the actions have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A moderate deviation from the regulatory requirement means that the violator significantly deviates from requirements of the regulation or statute but some of the requirements are implemented as intended.

Count VI - Failure to Perform Weekly Inspections

This violation continued from at least January 1, 2008, until February 23, 2010.

This violation presents a moderate potential for harm to the environment and is a moderate deviation from the regulatory requirement.

A moderate potential for harm to the environment or the regulatory program means that the violation poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents or the actions have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

A moderate deviation from the regulatory requirement means that the violator significantly deviates from requirements of the regulation or statute but some of the requirements are implemented as intended.

Count VII - Failure to Manifest PCB Waste

This is a Non disposal violation (manifesting) - minor extent (13 ballasts contain less than 220-gallons of PCBs). This is a Circumstance: Level 3 (Significant Manifesting) violation because Respondent did not originally prepare a manifest identifying PCB waste.

E. COMPLIANCE ORDER

70. **Stop All Non-Compliant Waste Management Activities.** Respondent shall immediately stop all generation, receipt, storage, disposal, treatment, accumulation or transport of hazardous wastes at the Facility, except as provided by and in compliance with Sections 3002, 3004, 3005, 3007, and 3010 of RCRA, 42 U.S.C. §§ 6922, 6924, 6925, 6927, and 6930; and 22 C.C.R. §662610, et seq.

II. NOTICE OF RIGHT TO REQUEST A HEARING

A. PUBLIC HEARING

71. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidate Rules of Practice"), 40 C.F.R. Part 22, govern these proceedings.
72. Under the Consolidate Rules of Practice, you have the right to request a hearing. Any request for a hearing must be in writing and filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco,

California, within thirty (30) days of receipt of this Complaint. In the event that you intend to request a hearing to contest any material facts set forth in this Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this Complaint. 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 Karen Goldberg (ORC-3), Office of Regional Counsel, at the same address.

73. 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.
74. 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.
75. 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.
76. 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

77. 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.

78. In addition to the compliance schedule set forth in the Order above, 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.
79. 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.
80. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Karen Goldberg, ORC-3, Office of Regional Counsel, at the above address, telephone number (415) 972-3951.

III. EFFECTIVE DATE

81. 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).

9/27/11
Date



Jeff Scott

Director

Waste Management Division

United States Environmental Protection Agency,

Region IX

CERTIFICATE OF SERVICE

I certify that the original of the Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing, Docket # **RCRA-09-2011-0012 and TSCA-09-2011-0014** was filed with:

Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

A true and correct copy of the same was sent to the following parties via CERTIFIED MAIL to:

Ladd Kleimann, President
Fluoresco Lighting and Sign
5505 S. Nogales Hwy.
Tucson, AZ 85126

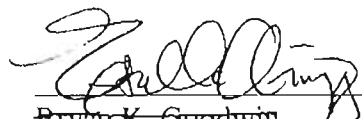
CERTIFIED MAIL NUMBER: 7010 2780 0000 8388 7399

And by mail to:

Patrick Paul, Esq.
Snell & Wilmer, LLP
400 East Van Buren Street, Suite 1900
Phoenix, AZ 85004-2202

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Karen Goldberg, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/30/11

Date