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BY ELECTRONIC and CERTIFIED MAIL RETURN RECEIPT REQUESTED

November 3, 2010

Steven C. Schlang, Esq., Enforcement Counsel  
U.S. Environmental Protection Agency-Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

RE: In the Matter of: Hudson Color Concentrates, Docket Number: RCRA-01-2010-0026, Respondent's Production of Additional Documents

Dear Attorney Schlang:

This office represents Hudson Color Concentrates ("Hudson" or the "Respondent") of 50 Francis Street, Leominster, MA 01453. Hudson is a division of L&A Molding Corporation. On or about September 1, 2010, Hudson received an Administrative Complaint and Order from the United States Environmental Protection Agency ("EPA") (the "Complaint"), which included three counts representing alleged violations of Section 3007 of the Resource Conservation and Recovery Act ("RCRA") and the Massachusetts Hazardous Waste Management Act ("c. 21C"); with proposed penalties assessed in the amount of \$68,644.

On October 19, 2010, we met with you and RCRA Inspector Donald MacLeod at a Settlement Conference to discuss the issues and penalties in the complaint. At that meeting, you invited Hudson to present additional information and documentation in order to further substantiate Hudson's position that EPA's proposed penalties for Counts I (lead in waste pigment) and II (universal waste) should be reduced to a less than "major" level in the EPA Penalty Matrix.

Accordingly, you have requested that we respond to the following:

**Count I:** Provide information/documentation to support Hudson's position that only a minute amount of lead entered the waste stream.

Attached please find Waste Estimate Calculations for the year prior to the EPA inspection (September 1, 2008 to August 30, 2009), which documents that the total amount of lead contained in all of the waste materials generated by Hudson in loose powder form (as opposed to solid, cured plastic) was approximately 39 pounds during the one-year period from September 1, 2008 to August 30, 2009. This total amount of lead includes the lead that was present below the TCLP regulatory level

in wastes that were analyzed and determined to be nonhazardous (including the waste collected in the dust collector and floor sweepings collected in production areas). We believe these calculations corroborate that the amount of lead that was placed in the waste stream was exceedingly small and therefore does not warrant the imposition of a "major" penalty, rather only a "minor" penalty, as we proposed at the Settlement Conference at a level of \$4,250.

**Count II:** Provide information/documentation to corroborate that only one bulb was broken and that other bulbs that were waiting for removal were intact and still functioning.

Attached please find an Affidavit signed by William Prendergast, Director of Operations for Hudson, which states: (1) there was only one broken bulb among the 688 bulbs removed during an energy efficiency program; (2) all of the bulbs were working when removed and others were brand new and never taken out of their original boxes; (3) because the bulbs were still working, Hudson contemplated selling them but ultimately determined that it would send them offsite for recycling by a licensed universal waste vendor. It would not seem reasonable or fair to categorize one broken bulb as subject to a Major/Major penalty of \$32,915. We believe the statements in Mr. Prendergast's Affidavit supplemented by all the actions Hudson took to handle and dispose of the bulbs justifies the imposition of a penalty only in the "minor" category, as we proposed at the Settlement Conference at a level of \$2,130.

We hope this additional information will serve to further support our request to reduce the proposed penalties.

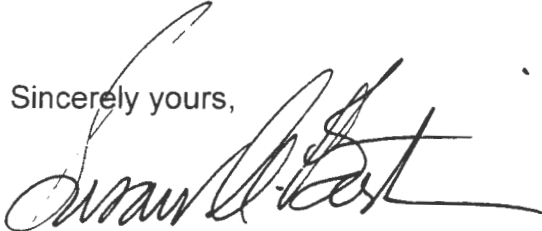
We appreciate the EPA's concern for consistency regarding its enforcement actions. We would like to reference three EPA cases: (1) in addition to the Long Island Railroad case we referenced at the Settlement Conference which involved a penalty of \$43,875 for improperly disposing 260,000 spent fluorescent light bulbs (~\$0.1685 per bulb); (2) a manufacturer in Lowell, MA; and (3) a Metal Finishing Plant in Saco, Maine. See, attached. On the facts available to us regarding these cases, it appears that the extent of noncompliance by these facilities far outweighs what Hudson has been cited for, yet it appears that the total penalties incurred in the cases were less than that proposed by EPA for Hudson.

Further, we hope that you will consider all the information we have previously presented in making your determination, including our written responses and our oral presentation at the Settlement Conference.

Hudson would like to settle this matter expeditiously and fairly. It would prefer not to proceed with ALJ supervised Alternative Dispute Resolution, but it will not rule out its right to do so if satisfactory resolution cannot be reached.

We look forward to your response.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Susan A. Bernstein". The signature is fluid and cursive, with a long horizontal stroke at the end.

Susan A. Bernstein, Esq.

Attachments: Waste Estimate Calculations  
Affidavit of William Prendergast  
EPA Press Releases on RCRA Penalty Cases

cc: Donald MacLeod, RCRA Technical Enforcement Office, US EPA  
Lloyd A. Watt, President, Hudson Color Concentrates  
Gary Carr, Technical Director, Hudson Color Concentrates  
William Prendergast, Director of Operations, Hudson Color Concentrates  
Kristina Richards, Woodard & Curran  
Wanda Santiago, Regional Hearing Clerk, US EPA, Region 1



## Waste estimate calculations

The following provides documentation that the total amount of lead contained in all of the waste materials generated by HCC in loose powder form (as opposed to solid, cured plastic) was approximately 39 lbs during the one-year period from September 1, 2008 to August 30, 2009. This total amount of lead includes the lead that was present below the TCLP regulatory level in wastes that were analyzed and determined to be nonhazardous (including the waste collected in the dust collector and floor sweepings collected in production areas).

Production loss is calculated by subtracting bill of material (BOM) amount minus saleable product produced from each production run. See attached material loss report (spreadsheet titled Production by Date). Total BOM loss during the one-year period from September 4, 2008 to August 30, 2009 was 59,243 lbs. BOM loss includes both material lost during extrusion and blending. The loss during the extrusion process is in solid plastic form such as pellets, solid plastic lumps and plastic strands. Some of this lost material in solid plastic form is collected and sold as low-grade product.

Waste is also generated during purging of extruders after each production run in order to avoid color contamination of the next product. Clean purge material is used to flush out any residual product remaining in the production equipment. A schedule of the purge material amounts is attached (spreadsheet titled Flush Usage). The total amount of clean purge material used between September 2008 and August 2009 was 73,991 lbs. Some of this material is collected and sold as low grade product.

The total amount of solid plastic material generated from extrusion and purging that was sold as low-grade product during the one year period previous to the EPA inspection was 69,406 lbs (see attached purge calculations).

Calculations: (all amount in pounds representing the one-year period between September 2008 and August 2009)

Waste generated from BOM's	59243
Clean purge material used (contains no lead)	<u>73991</u>
Total loss	133,234
Minus total material sold	<u>-69,406</u>
Total unsold loss material	63828

The amount of waste material generated that was not sold as product during the one-year period was 63,828 lbs out of 133,234 lbs (48% of the total). We estimate that this percentage is representative of the total amount of waste generated from BOMs that is not sold as product. **Therefore, 28,437 lbs (48% of 59,243 lbs) total waste was generated**

**and disposed of during the one-year period between September 2008 and August 2009.**

Lead Chromate usage during this period was	107,051
Total raw materials used	4,495,623

Therefore lead Chromate accounted for 2.38% of all BOM raw materials  
( $107051/4495623 * 100 = 2.38\%$ )

2.38% of the total waste generated (28,437) listed above = 677 lbs

The maximum level of the lead component of lead chromate is 66%

Therefore, 677 lbs lead chromate x 66% lead content equals 447 lbs of lead present in all waste streams.

A substantial amount of the lead present in the waste is encapsulated in cured, solid plastic form, and is therefore not expected to be leachable. To estimate the amount of waste that is generated in loose powder form as opposed to cured form, the percent loss (as powder) during a typical one-day period was measured on October 28, 2010. Approximately 12 lbs of dust waste was generated (not including waste collected in dust collectors) when 20,634 lbs of product was blended, representing approximately 0.06% of the total product. Therefore, the total amount of powder waste generated during the one-year period presented above can be estimated by multiplying the total production for the year (4,495,623 lbs) by 0.06% and adding the dust collector waste (approximately 2,880 lbs). Therefore:  $4,495,623 \times 0.0006 + 2,880 = 5,577$  lbs waste generated in dust form. The total lbs of waste generated in dust form divided by the total pounds of waste generated gives us an estimate of the percentage of the total waste that was in powder form:  $5577 \text{ lbs} / 63828 \text{ lbs} \times 100 = 8.7\%$ .

Based on the above, we estimate that the amount of powdered pigment loss was approximately 8.7% of the total waste generated. Therefore,  $0.087 \times 447 \text{ lbs} = 39$  lbs total lead. Some of this lead component was present in waste streams that were sampled and analyzed, and determined to be nonhazardous such as the waste dust collected in the facility's dust collection system, and floor sweepings collected in production areas. Although some lead was present in these waste streams, it was present below the regulatory level of 5 mg/L established in 310 C.M.R. 30.125.

AFFIDAVIT OF WILLIAM PRENDERGAST,  
DIRECTOR OF OPERATIONS,  
HUDSON COLOR CONCENTRATES

I, William Prendergast, do hereby on oath depose and state as follows:

1. I am employed as the Director of Operations for Hudson Color Concentrates ("HCC"), located at 50 Francis Street, Leominster, MA 01453.
2. On or about June 10, 2008, HCC made the decision to conduct an Energy-Saving Program ("ESP") at its facility which would involve removing existing T12 bulbs and replacing them with more energy efficient T8 bulbs. The ESP was initiated in order to reduce energy costs for HCC and to obtain an overall reduction in the use of energy. The goal of the ESP was to replace all existing bulbs, which included all functioning bulbs. The ESP resulted in the swapping and installing of approximately 688 bulbs throughout HCC's facility.
3. In July 2009, Brian Schmaltz, HCC's Maintenance Manager and I had a conversation with Richard Scott, owner and operator of Richard Scott Company, a cleaning company that has worked with HCC for several years. Mr. Scott expressed an interest in purchasing the functioning bulbs from HCC that would be removed through the ESP.
4. At the time, we considered selling the lamps at a fraction of the estimated \$1,000 cost of this quantity of lamps if the lamps were new. HCC felt that since the lamps were still usable and in working order, by selling them we could save the disposal costs and conserve both funds and energy. Many of the lamps that were removed were new, in their original boxes, never opened or installed.

5. I personally observed only one broken bulb in the shipping area of HCC's facility. To the best of my knowledge, none of the other bulbs were broken, as all the bulbs that had been removed were in good working order.
6. HCC had not made a decision as to whether it would sell the usable lamps or proceed to hire one of the vendors we had asked to provide bids for the costs of pick up and off-site recycling of the lamps.
7. Following the on-site inspection conducted by Donald MacLeod, Inspector with the U.S. Environmental Protection Agency ("US EPA"), on September 22, 2009 at HCC's facility, we decided that we would not sell the usable lamps and to instead have a licensed vendor remove them.
8. On October 31, 2009, all of the lamps were removed from HCC by Veolia E S Technical Solutions, LLC, of Stoughton, MA, a licensed universal waste company.
9. HCC has previously provided US EPA with documentation of the removal of the lamps.

Signed under the pains and penalties of perjury this 1 day of November 2010.



*William Prendergast*  
William Prendergast  
Director of Operations  
Hudson Color Concentrates

*Signed before me on November 1, 2010*  
*[Signature]*  
Notary Expires 3/10/2011  
COMMONWEALTH OF MASSACHUSETTS

# EPA Settlement with LIRR Sheds Light on Need for Proper Disposal of Fluorescent Bulbs

Release date: 04/16/2008

Contact Information: Beth Totman (212) 637-3662, totman.elizabeth@epa.gov

(New York, N.Y.) Most Long Island Rail Road (LIRR) commuters don't give the proper disposal or recycling of the fluorescent lights over their heads a second thought as they ride in and out of Manhattan. However, this issue is at the heart of the recent resolution of a U.S. Environmental Protection Agency (EPA) complaint against the LIRR, which the railroad settled by paying a financial penalty of \$43,875.

EPA inspected the Hillside Maintenance Facility in Hollis, New York last year and based on that inspection and other information received from LIRR, found violations in disposing of fluorescent light bulbs as regular garbage at three facilities. In addition to the Hillside facility, Richmond Hill Sheridan Shop in Richmond Hill, NY and West Side Storage Yard in New York City were identified. While fluorescent bulbs may seem harmless, they contain mercury and can be harmful to people and the environment if improperly discarded. The LIRR estimates that it generated nearly 260,000 spent fluorescent light bulbs from 2003 to 2005. In July 2005, the railroad determined its spent bulbs are wastes that needed special handling in accordance with EPA rules. The LIRR immediately put a program into place to recycle and properly manage its spent bulbs. The LIRR is now in compliance with all EPA rules on the proper handling of spent fluorescent bulbs.

"Fluorescent lights are super efficient -- up to 80% more than incandescent bulbs -- which is great for the environment, but they do have to be handled properly once they burn out," said EPA Regional Administrator, Alan J. Steinberg. "Most people don't realize that every time they toss a fluorescent bulb into the regular trash, they are releasing mercury into the environment. Though these bulbs only contain a very small amount of mercury, it can add up fast. The LIRR settled this matter quickly and is setting a good example for others by recycling these items."

Currently available recycling systems can capture up to 99% of the mercury in fluorescent bulbs and the mercury can be reused in new bulbs. Other types of light bulbs, including high-intensity discharge (HID), neon, mercury vapor, high pressure sodium, compact fluorescent, and metal halide lamps can also contain mercury, lead, and cadmium.

While the disposal of certain low mercury and green tip fluorescent bulbs are not covered by EPA rules, Agency regulations require that non-green tip spent mercury and other toxic metal-containing bulbs from business, industry and government be handled as hazardous waste or under the simpler universal waste rules to prevent the release of mercury and other toxins into the environment. The universal waste regulations streamline collection requirements for certain hazardous wastes in the following categories: batteries, pesticides, mercury-containing equipment (e.g., thermostats) and lamps (e.g., fluorescent bulbs). While EPA recommends that even green tip spent bulbs be recycled because they do contain less but some mercury, some states have stricter requirements and may require that even green tip spent bulbs be handled as a hazardous waste.

Once it's released into the environment, mercury will repeatedly cycle through the land, water and air. When airborne, it can be deposited on soil and water bodies, settle in sediments and, ultimately, be consumed by and stored in the fat reserves of living organisms. An unfortunate outcome of this problem is the prevalence of fish advisories resulting from mercury contamination.

For more information on the proper disposal of mercury and other toxic metal-containing bulbs in New York State, members of the public and businesses should contact Anthony Martin, Department of Environmental Conservation, at (518) 402-8633, [Ajmartin@gw.dec.state.ny.us](mailto:Ajmartin@gw.dec.state.ny.us), or visit <http://www.dec.ny.gov/chemical/285.html>.

For more information about the federal rules for the proper disposal of mercury and other toxic metal-containing bulbs visit: <http://www.epa.gov/region02/waste/spent-lamp.pdf>.



# EPA: United States Environmental Protection Agency

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## News Releases from Region 1

### **Lowell, Mass. Manufacturer to Perform Environmental Audits, Pay Fine for Air and Waste Violations**

Release date: 08/10/2009

Contact Information: Paula Ballentine, (617) 918-1027

(Boston, Mass. – Aug. 10, 2009) - Bradford Industries, Inc. will hire an independent environmental auditor to conduct two comprehensive audits of Bradford's environmental compliance in order to settle a federal enforcement case for violations at the company's fabric coating plant in downtown Lowell, Mass.

Under the settlement, which was negotiated with EPA and the U.S. Department of Justice, Bradford will also establish full-time environmental manager and environmental technician positions, and will pay a \$75,000 penalty.

The case complaint, filed together with the settlement on Aug. 7 in Massachusetts federal district court, alleged that Bradford violated 21 separate Clean Air Act and hazardous waste requirements at its Lowell plant. The alleged violations included failure to monitor and maintain air pollution control equipment, and improper handling and storage of hazardous wastes generated at the plant.

Some of Bradford's violations caused excess volatile organic compound ("VOCs") and hazardous air pollutant emissions (mainly toluene). VOCs are a main precursor of ground-level ozone smog, a special concern in Massachusetts because the state's air contains unhealthy ozone concentrations.

The environmental audit firm will independently examine Bradford's compliance with all major environmental laws, regulations and permits. The firm will conduct two separate audits about a year apart, and will produce audit reports that will be sent directly to EPA. The \$75,000 settlement amount takes into account the economic impact of the penalty on Bradford's business.

More information:

- EPA [enforcement of clean air requirements](http://epa.gov/region1/enforcement/air/index.html) in New England (epa.gov/region1/enforcement/air/index.html )
- EPA [enforcement of hazardous waste requirements](http://epa.gov/region1/enforcement/waste/index.html) in New England (epa.gov/region1/enforcement/waste/index.html )

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# EPA: United States Environmental Protection Agency

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## News Releases from Region 1

### Saco, Maine Metal Finisher Faces EPA Fine for Hazardous Waste Violations

Release date: 10/07/2010

Contact Information: David Deegan, (617) 918-1017

(Boston, Mass. – Oct. 7, 2010) – EPA has proposed a penalty of \$54,397 against a metal finishing and electroplating facility in Saco, Maine, for five counts of violating state and federal hazardous waste laws.

According to EPA, Southern Maine Specialties violated state hazardous waste laws as well as the federal Resource Conservation and Recovery Act (RCRA) by improper storage, labeling and other management of hazardous waste, as well as by not providing adequate employee training.

The EPA complaint outlines that Southern Maine stored containers of hazardous waste next to incompatible material; failed to provide required hazardous waste management training for employees; exceeded the limit of 55 gallons of one type hazardous waste in one place by storing two 55-gallon containers of sodium hydroxide sludge together; and failed to comply with tank management standards by having a tank of hazardous waste that was not designed to hold hazardous waste, was not labeled with the words "hazardous waste," and was not being managed according the required tank operating standards.

The complaint filed last month grew out of a January inspection of the facility by EPA.

More information: [EPA enforcement of hazardous waste laws](http://www.epa.gov/region1/enforcement/waste/index.html)  
(<http://www.epa.gov/region1/enforcement/waste/index.html>)

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