

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

<p>In The Matter of:</p> <p>Advanced Recovery, Inc.</p> <p>Respondent,</p> <p>Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.</p>	<p style="text-align:center">CONSENT AGREEMENT AND FINAL ORDER</p> <p style="text-align:center">Docket No.: RCRA-02-2013-7106</p>
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PRELIMINARY STATEMENT

This civil administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding.

The Respondent is Advanced Recovery, Inc. (hereinafter "ARI" or "Respondent"). Respondent is a business that has been engaged in the recycling of electronic ("e-wastes") and universal wastes since 2008, and is located at 41 Mechanic Street, Port Jervis, New York, 12771.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on or about September 30, 2013. The Complaint alleged that Respondent failed to comply with RCRA and federally authorized New York State hazardous waste regulations at its Port Jervis, New York facility. Complainant filed an extension of time to file an Answer on November 15, 2013. On January 8, 2014, Respondent filed its Answer to the Complaint and requested an administrative hearing. The parties filed prehearing exchanges and rebuttal prehearing exchanges pursuant to Prehearing, Scheduling and Hearing Orders issued by Judge Coughlin on March 10, 2014 and July 11, 2014. Between January 2014 through September 2014 Complainant and Respondent conducted settlement negotiations which led to this agreement.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent

1. Respondent is Advanced Recovery, Inc.
2. Respondent has been engaged in the recycling of electronic ("e-wastes") and universal wastes since 2008, at a facility located at 41 Mechanic Street, Port Jervis, New York, 12771 ("Respondent's facility").
3. Respondent is a for-profit corporation organized pursuant to the laws of the State of New Jersey in 1991. Respondent is a "person" as that term is defined in Section 1004 (15) of the Act, 42 U.S.C. § 6903(15), and in Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b).¹
4. Respondent recycled fluorescent light bulbs, cathode ray tube monitors, and other universal e-wastes using a bulb crusher which released phosphor dust and other hazardous wastes into the air and soil at its Facility.
5. Operations by the Respondent at its Facility began on or about 2008.
6. Respondent is and has been the "owner" of the facility as that term is defined in 6 NYCRR § 370.2(b).
7. Respondent is and has been the "operator" of the facility as that term is defined in 6 NYCRR §370.2(b).

Notification of Hazardous Waste Generation

8. Respondent notified EPA on or about May 28, 2008 through a RCRA Section 3010 notification of Regulated Waste Activity, that it generated hazardous waste at its facility.
9. In response to Respondent's notification, for the off-site disposal of hazardous waste, EPA assigned Respondent with EPA Identification Number NYR000157636,

Respondent's Generation of Solid Waste and Hazardous Waste

10. Hazardous wastes generated by Respondent through its cathode ray tube ("CRT") monitors recycling, fluorescent light bulb-crushing storage and handling activities, and in the

¹ All words or phrases that have been defined in reference to statutory and/or regulatory provisions are used throughout the Complaint as so defined.

course of normal building maintenance have included but are not limited to broken fluorescent light bulbs, phosphor dust, and mercury vapor (listed on manifests as D009).

11. Respondent has been a “generator” of “hazardous waste” as those terms are defined in 6 NYCRR §370.2(b) and 6 NYCRR §371.1(d), respectively. The requirements for generators are set forth in 6 NYCRR Part 372.

12. Respondent generated 1,000 kilograms (“kg”) or more of hazardous waste for at least a month as of July 25, 2012 and was for at least that month what is often referred to as a Large Quantity Generator (“LQG”).

13. Hazardous waste is and has been stored at various locations at the facility without a permit for the interim storage of hazardous waste.

14. Respondent’s facility is and has been a “storage” facility as that term is defined in 6 NYCRR §370.2(b).

EPA Investigation Activities

15. On or about July 25, 2012, a duly designated representative of EPA (“Inspector”) conducted a RCRA Compliance Evaluation Inspection of Respondent at its facility (the “Inspection”).

16. During the Inspection, the facility was using a drum top bulb crusher to crush fluorescent light bulbs.

17. During the Inspection, the facility representative told the EPA Inspector that the facility had not taken certain actions which are required to be taken to be able to store hazardous waste on a short-term basis without a permit.

18. During the Inspection, there were shards of glass and phosphor dust from the crushed light bulbs on the bulb crusher and on the floor surrounding the bulb crusher.

19. During the Inspection, there were two (2) open cartons containing broken fluorescent light bulbs near the bulb crusher.

20. Fluorescent light bulbs contain mercury vapor which can be released into the surrounding air when the bulbs are broken or crushed.

21. During the Inspection, the facility stored three (3) drums (55 gal) of crushed fluorescent light bulbs in the boiler room annex and these drums were not covered.

22. During the Inspection, there was a fiber drum cover containing pieces of crushed light bulbs in the boiler room annex.

23. During the Inspection, there were eight (8) drums (55 gal) of crushed fluorescent light bulbs in the area next to the boiler room.

24. The aforesaid drums of crushed fluorescent bulbs mentioned in paragraphs "21" and "23" were not labeled with the words "hazardous waste" and other words to describe their contents.

25. The 11 drums of crushed fluorescent bulbs mentioned in paragraphs "21" and "23" were not marked with the dates when the crushed bulbs started to be accumulated in the drums.

26. The eight (8) drums in the area next to the boiler room were shrink- wrapped and did not have lids.

27. There were eight (8) broken fluorescent bulbs (non-green tipped) in a box next to the boiler and two broken bulbs in the whole unit storage area.

28. At the time of the Inspection, the facility was separating the panel glass from the funnel glass of the CRT monitors by cutting, thereby generating a release of dust from the separating of the funnel glass from the panel glass.

29. During the Inspection, Respondent failed to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents into the air through its numerous actions or inactions as demonstrated by the following situations:

- (i) Shards of glass and phosphor dust on the top of the bulb crusher and in the surrounding area near the bulb-crusher;
- (ii) Two (2) open cartons of broken fluorescent light bulbs near the bulb crusher;
- (iii) Three (3) open drums containing crushed fluorescent light bulbs in the boiler room annex;
- (iv) Eight (8) drums of crushed fluorescent light bulbs not adequately covered in the area next to the boiler room;
- (v) Shards of glass and phosphor dust in the boiler room annex;
- (vi) one fiber drum cover containing pieces of crushed fluorescent light bulbs in the boiler room annex;
- (vii) Eight broken fluorescent light bulbs in a box next to the boiler and two broken bulbs in the whole unit storage area; and
- (viii) Dust generated from the cutting of the CRT monitors.

30. During the Inspection, the bulb crusher and the two (2) open cartons of broken fluorescent light bulbs were observed to be close to the loading dock area that was open to the outside.

31. Respondent's aforementioned failures to maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents into the air, soil or surface water which could threaten

human health or the environment, as described above in paragraphs “29” and “30” are violations of 6 NYCRR § 373-2.3(b).

32. Pursuant to 6 NYCRR § 372.2(a)(8)(ii), a generator may accumulate hazardous waste on-site for ninety (90) days or less without having a permit or interim status provided all applicable requirements referenced therein, including but not limited to, the requirements set forth in 6 NYCRR § 373-1.1(d)(1)(iii), are complied with.

33. Pursuant to 6 NYCRR § 373-1.1(d)(1)(iii), to be exempt a generator must comply with, among other things, the container requirements set forth in 373-3.9; the preparedness and prevention requirement set forth in 6 NYCRR 373-3.3 and the contingency plans and emergency procedures set forth in 6 NYCRR § 373-3.4. Additionally, pursuant to 6 NYCRR §§ 373-1.1(d)(1)(iii)(c)(2)-(3), accumulation dates must be clearly marked on containers and each container must be labeled with the words “hazardous waste” and other words that identify its contents.

34. As of at least July 25, 2012, Respondent had failed to satisfy all the conditions referenced in 6 NYCRR § 372.2(a)(8)(ii), including applicable conditions referenced above, which, if complied with, would have allowed Respondent to store hazardous waste at the facility for up to 90 days without interim status or a permit. The Respondent did not comply with these storage conditions for at least 62 days prior to the Inspection.

35. Respondent’s storage of hazardous waste at its facility without interim status or a permit is a violation of Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2(c).

36. The parties have agreed to settle this matter as per the terms noted below.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties and Respondent knowingly and voluntarily agrees as follows:

1. Commencing on the effective date of this Compliance Order, Respondent shall, if it manages hazardous waste, maintain and operate its facility so as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil or surface water which could threaten human health or the environment.

2. Commencing on the effective date of this Compliance Order, Respondent shall, if it manages hazardous waste, properly label containers with the words “hazardous waste” and other words that identify its contents, mark containers with the start dates when the hazardous waste started to be accumulated in the containers, and store hazardous waste only in containers that are in good condition with proper lids and covers.

3. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall, if it manages hazardous waste, comply with all other applicable federal and state regulatory requirements for hazardous waste generators, including those provisions for the short-term on-site storage of hazardous waste by the generator of such waste at its facility.

4. All responses, documentation, and evidence submitted in response to this Consent Agreement should be sent to:

Abdool Jabar
Environmental Scientist
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

5. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies specific factual allegations contained in the Complaint.

6. Respondent shall pay a civil penalty to EPA in the total amount of twenty-five thousand dollars (\$25,000) in separate monthly installment payments according to the schedule set forth below. Such payments shall be made by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payments are made by checks, then the checks shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

7. Each check shall be identified with a notation thereon: **In the Matter of Advanced Recovery, Inc.** and shall bear thereon the Docket Number: **RCRA-02-2013-7106**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Advanced Recovery, Inc.**
- 7) Case Number: **RCRA-02-2013-7106**

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Melva J. Hayden, Esquire
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency-Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

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

8. The initial payment of two thousand five hundred dollars (\$2,500) must be received on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO. Starting in December of 2014, Respondent shall pay six hundred and twenty-five dollars (\$625.00) every month, and each month's payment must be received by EPA before the 15th of each month until (and including) November 2017.

- a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Further, if any payment is not received on or before the applicable due date described above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following any due date for which a balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of any due date.

9. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

10. If Respondent fails to make timely payment of any of the installment penalty payments

described in paragraph 8, Respondent shall pay a stipulated penalty of \$5000 for each such failure. Payment of stipulated penalties shall be made in the same manner as prescribed in paragraphs 6 and 7 for payment of the civil penalty installments. EPA in its sole discretion may reduce or eliminated any stipulated penalty due under this paragraph.

11. The civil penalties and any stipulated penalties that come due under the terms of this Consent Agreement are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. Section 162(f), and are not deductible expenditures for purposes of federal or state taxes.

12. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.

13. Respondent waives its right to have a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or EPA's Findings of Fact or Conclusions of Law contained within these documents.

14. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

15. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.

16. Each party shall bear its own costs and fees in this matter.

17. The representative of Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.

18. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.

19. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

20. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT:

Advanced Recovery, Inc.

BY:



NAME:

Mark Rea

TITLE:

President

DATE:

10-15-2014

COMPLAINANT:

United States Environmental Protection
Agency – Region 2

BY:



NAME:

Dore LaPosta

TITLE:

Director, Division of
Enforcement & Compliance
Assistance

DATE:

October 23, 2014

In the Matter of: Advanced Recovery, Inc.,
Docket No.: RCRA-02-2013-7106

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.

_____

Helen Ferrara
Regional Judicial Officer
United States Environmental Protection Agency,
Region 2

DATE: October 27, 2014

CERTIFICATE OF SERVICE

I hereby certify that on OCT 28 2014 I caused a copy of the Consent Agreement and Final Order in the proceeding identified as In the Matter of: Advanced Recovery, Inc., Docket No.: RCRA-02-2013-7106 to be sent to the following persons in the manner indicated:

Original and One Copy by hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2.
290 Broadway
New York, NY 10007-1866

Copy by Electronic and Regular Mail to:

The Honorable Christine D. Coughlin
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Electronic Filing: OALJ E-Filing System

Copy by Electronic and Regular Mail to:

Kirk O. Orseck, Esq.
Orseck Law Offices, PLLC
1924 State Route 52
Liberty, NY 12754
Email: orsecklaw@yahoo.com

Date: October 28, 2014

