

IN THE MATTER OF:)	DOCKET NO.
)	
Mercury Vapor Processing)	RCRA-05-2010-0015
Technologies Inc., aka River)	
Shannon Recycling)	
13605 S. Halsted St.)	
Riverdale, Illinois 60827)	
)	
Respondent)	

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OCT 29 2010
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

United State Environmental Protection Agency

Region V

Motion for Amendment of Answer

The Respondent, Mercury Vapor Processing Technologies, Inc. requests to amend their answers to the Complaint and Compliance Order to read as follows:

- 4. Admit
- 12. Admit
- 13. Admit
- 14. Admit
- 15. Admit
- 19. Deny
- 23. Deny
- 38. Admit
- 109. Deny

Thank you,

10-27-10

Date

L. C. Kelly

Laurence C. Kelly

On behalf of

Mercury Vapor Processing Technologies, Inc.

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River Shannon Recycling (MVP / RSR) acted as a large quantity generator in accordance with both state and federal published rules relating to the handling and accumulation of Universal Waste exceeding 5000 kg in any given month. RSR has never processed or volume reduced any of its accumulated inventories which are consistent with federal rules. As published in 40 CFR 273 on the USEPA web site and guidance at the IEPA website, River Shannon Recycling applied for and received an ILD number for a large quantity generator status. Since its' inception in October 2003, MVP / RSR has reported on a quarterly basis to a state designated person (Please see Respondent's Exhibit 19) regarding the handling and accumulation conducted by MVP / RSR. MVP / RSR supplied covered containers to our small quantity generator client base for staging their spent lamps. From time to time MVP / RSR upon request would pick-up those containers that were full and drop fresh containers at that location. MVP / RSR would transport those lamps to an accumulation point located in Riverdale, Illinois. MVP / RSR would contact Shannon Lamp Recycling (SLR) to bring its state authorized mobile volume reduction unit to Riverdale Property and volume reduce anywhere between 8,000 to 15,000 lamps. The patented volume reduction equipment (Please see Respondent's Exhibit 8) and the authority to utilize this equipment (Please see Respondent's Exhibit 9) was specifically owned by Laurence C. Kelly who was also a principal of MVP / RSR involved with marketing, sales and Health and Safety issues. Acting as a sole proprietor of SLR, Mr. Kelly would safely conduct the volume reduction activities for MVP / RSR. The volume reduced lamps consistently have demonstrated that they pass TCLP (Please see Respondent's Exhibit 14). Subsequent to the volume reduction, MVP / RSR would shop known end users for resale (Please see Respondent's Exhibit 10a and 10b). When the non-hazardous mixed glass and metal products began to fill MVP / RSR's lined and covered roll-off, if no known end users for resale could be identified, in order to avoid possible speculative accumulation issues and attractive nuisance issues MVP / RSR would have the volume reduced non-hazardous materials disposed of at a non-hazardous landfill (Please see Respondent's Exhibit 11). The materials were moved under non-hazardous Bills of Lading to the landfill.

Responding to a completely fabricated story published in the Chicago Tribune, on October 29th 2007, the USEPA came to the Riverdale Property on October 30th, 2007 and conducted a day long site investigation using extremely sensitive equipment to detect the presence of mercury in and outside the property. After a day of analyzing the results of that investigation the USEPA

saw fit to issue the following statements on two separate occasions (11-01-07 and 11-06-07) in the form of press releases. (Please see Respondent's Exhibit 16a and 16b).

Those statements combined with a memo issued by the Assistant Administrator of the Office of Enforcement and Compliance Assurance that reads **"By finalizing 40 CFR 273, EPA has taken the position that managing waste in compliance with those standards is environmentally protective. Therefore where States are implementing the Part 273 standards but have not yet received authorization, Regions should take enforcement actions involving universal Waste only where handlers of such wastes are not in full compliance with Part 273 standards. Regions should continue to address universal waste management practices that may present an imminent and substantial endangerment to human health and the environment under the authority provided in section 703 of RCRA"** (Please see Respondent's Exhibit 4a) indicate that enforcement actions are not warranted due to the fact that at no time did MVP / RSR accumulation activities as a large quantity generator violate 40CFR Part 273. Further, the USEPA's **"four person team that conducted a site specific inspection and concluded that no evidence that River Shannon posed a public health threat to mercury emissions inside or outside the building"** located in Riverdale, Illinois (Please see Respondent's Exhibit 16a and 16b).

MVP / RSR operated within the protocols for a large quantity generator as described in both 40 CFR Part 273 and 35 IAC Part 733. Illinois adopted and published its Universal Waste regulations over ten years ago, and has been managing these regulations with the full knowledge of the USEPA. Enforcement action against MVP / RSR is unnecessary. Further, MVP / RSR ceased operating in early 2008, and the corporation has since been dissolved. MVP / RSR never turned a profit during their operations, as evidenced by the balance sheets, profit and loss sheets and tax returns provided to the USEPA. MVP / RSR believes that any penalty amount is unwarranted, and does not have the ability to pay a penalty of any amount.

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Region V

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PROTECTION AGENCY

Responses to Administrative Complaint and Compliance Order

1. Admit

2. Admit

3. No Knowledge

4. Admit

5. Admit

6. Admit

MVP / RSR admits that the USEPA has promulgated these regulations. MVP / RSR denies that these regulations apply to their company.

7. Admit

8. Admit

MVP / RSR admits that the USEPA has promulgated these regulations. MVP / RSR denies that these regulations apply to their company.

9. Admit

10. Deny

While the USEPA claims that Illinois is not authorized to administer Universal Waste regulations, it has allowed Illinois to publish it's own Universal Waste regulations in 35 Illinois Administrative Code, under its own section, 35 IAC 733 titled "Standards for Universal Waste Management", and has allowed those regulations to remain published for over ten years. Attached Respondent's Exhibits 1a and 1b are copies of an annual conference between the Illinois EPA and the US EPA dated 2004 and 2005 respectively.

Each specifically discusses Universal Waste as it relates to Illinois Authorization. Although Universal Waste is on the docket for discussion both in 2004 and 2005, there is no mention by either the Illinois EPA or the US EPA that there are any issues relating to publication of 35 IAC Part 733, and in subsequent years, the issue of Illinois' Universal Waste Authorization has not appeared on the docket for this conference. In fact, in the 2006-2007 and the 2008 – 2009 conferences, the docket merely mentions, "Illinois EPA will continue to work with the USEPA and state legislature toward resolution of the Proportionate Share Liability statute (Brownfields), which is the last remaining statutory issue affecting the authorization process". This is attached as Respondent's Exhibit 1c. If Illinois' published Universal Waste regulations have no merit, and these wastes are to be managed as hazardous wastes, then, in fact, millions of pounds of hazardous waste have been mismanaged by the citizens of Illinois since the publication of Illinois Universal Waste regulations, and therefore, the liability created for the businesses of Illinois is not quantifiable.

11. Deny

The USEPA's website provides guidance on state specific universal waste regulations at the following link: <http://www.epa.gov/wastes/hazard/wastetypes/universal/statespf.htm> . Please see the attached Respondent's Exhibit 2. This link provides a page titled "Where You Live" and subtitled "State-Specific Universal Waste Regulations". This page provides a color coded map as to which states are authorized, adopted, neither authorized nor adopted, or administered by EPA region. It goes on to list each state individually and provides links to rules in each state. The Illinois link re-directs to 35 IAC Part 733 – Standards for Universal Waste. The USEPA website does not link to Illinois authorized RCRA program. If the USEPA expects citizens in Illinois to manage these waste streams as RCRA waste, it should direct citizens of Illinois seeking guidance to those regulations.

Additionally, Illinois Authorized RCRA Subtitle C requirements include specific exemptions from the permit program at 35 IAC 703.123, which include exemption for lamps at 35 IAC 703.123 (h) (4), and states that Universal Waste "is subject to regulation pursuant to 35 Ill. Adm. Code 733." If these Subtitle C requirements are authorized by the USEPA, than Illinois is authorized to exempt lamps from Subtitle C requirements and regulate them under 35 IAC 733. Please see Respondent's Exhibit 3.

An advisory memo issued by the USEPA Assistant Administrator of the Office of Enforcement and Compliance Assurance and the Assistant Administrator of the Office of Solid Waste and Emergency Response states "By finalizing 40 CFR Part 273, EPA has taken the position that managing wastes in compliance with those standards in environmentally protective. Therefore, where States are implementing Part 273 standards but have not yet received authorization, Regions should take enforcement actions involving universal wastes only where handlers of such wastes are not in full compliance with the Part 273 standards." Please see Respondent's Exhibit 4a.

Further, a clarification of this memo was issued by Eric V. Schaeffer, Director of the Office of Regulatory Enforcement in response to a question posed by Norman Niedergang, Director of Waste Pesticides and Toxics Division, Region V, and states, in

part, "The Agency's April 10, 1996 Implementation Memorandum provides that the Regions should take enforcement actions against universal waste handlers in states that are implementing the universal waste program but have not yet been authorized for those regulations only where handlers are not in full compliance with the Part 273 standards. We established this policy to encourage states to begin implementation of the collection programs allowed by the universal waste rule." Please see Respondent's Exhibit 4b.

MVP / RSR maintain that they were operating within 35 IAC 733 and 40 CFR 273 standards.

12. Admit

13. Admit

14. Admit

15. Admit

16. Deny

The Riverdale property consisted of land and structures, and other improvements on the land, used for accumulation of Universal Waste in accordance with 35 IAC Part 733 Subpart C and 40 CFR Part 273 Subpart C and identified and acquired a federal generator ID number to act as a Large Quantity Generator in accordance with notification requirements found at 35 IAC Part 733 Subpart C and 40 CFR Part 273 Subpart C. Please see Respondent's Exhibit 5 regarding federal generator ID number.

17. Deny

The Riverdale property is not a "facility" as defined at 35 IAC 720.110 and 40 CFR 260.10 as it was not utilized for the treatment, storage or disposal of hazardous waste, nor was it utilized for managing hazardous secondary materials prior to reclamation. The Riverdale property was utilized for the accumulation of Universal Waste in accordance with 35 IAC Part 733 Subpart C and 40 CFR Part 273 Subpart C.

18. Deny

MVP / RSR admits representatives of the USEPA conducted a compliance evaluation inspection ("CEI") under section 3007 of RCRA, 42 U.S.C part 6927 at the Riverdale facility on October 30, 2007. MVP / RSR denies this count based on the use of the term facility. MVP / RSR denies the Riverdale property is a "facility" as defined under 35 IAC part 720.110 and 40 C.F.R part 260.10.

19. Deny

MVP / RSR admits during the CEI, USEPA's inspector observed cardboard boxes, drums, two roll-off containers and three semi-truck trailers containing waste lamps at or adjacent to the Riverdale property. MVP / RSR denies this count based on the use of the term facility. MVP / RSR denies the Riverdale property is a "facility" as defined under 35 IAC part 720.110 and 40 C.F.R part 260.10.

20. Admit

MVP / RSR admits potentially thirty-three boxes of waste lamps were open and unlabelled. These containers were the results of continuous clean-up efforts due to ongoing vandalism occurring at the Riverdale property. Vandalism of the Riverdale property increased significantly subsequent to MVP / RSR's inability and limited ability to access the property after it was locked out by the Village of Riverdale on September 6, 2007 and it continued at a significantly increased rate from September 6, 2007 up until the time MVP / RSR turned the property back to their landlord in broom swept condition.

21. Admit

22. Admit

23. Deny

MVP / RSR admits beginning Universal Waste accumulation as a Large Quantity Handler and Generator in accordance with requirements found at 35 IAC Part 733 Subpart C and 40 CFR Part 273 Subpart C in February 2005. MVP / RSR denies this count based on the use of the term facility. MVP / RSR denies the Riverdale property is a "facility" as defined under 35 IAC part 720.110 and 40 C.F.R part 260.10. Please see Respondent's Exhibit 6 regarding the Universal Waste regulations published in Illinois.

24. Deny

MVP / RSR denies operating a "mobile treatment unit".

25. Deny

MVP / RSR denies operating a "mobile treatment unit", denies crushing waste lamps and denies capturing mercury vapor released from the crushing by a series of activated carbon filters in the form of mercuric sulfide.

26. Deny

As a large quantity generator, MVP / RSR supplied containers, transported, handled and accumulated spent lamps from Small Quantity Generators.

27. Deny

During the time period referred to in paragraph 26, MVP / RSR transported waste lamps to the Riverdale property for accumulation. MVP / RSR denies the Riverdale property is a "facility" as defined under 35 IAC part 720.110 and 40 C.F.R part 260.10. MVP / RSR denies crushing lamps at the Riverdale property.

28. Deny

MVP / RSR accumulated Universal Waste lamps at the Riverdale property in accordance with requirements at 35 IAC Part 733 Subpart C and 40 CFR Part 273 Subpart C. MVP / RSR denies crushing lamps at the Riverdale property.

29. Deny

MVP / RSR denies crushing lamps at the Riverdale property.

30. Deny

MVP / RSR denies crushing lamps at the Riverdale property.

31. Deny

MVP / RSR denies crushing lamps at the Riverdale property.

32. Deny

MVP / RSR denies crushing lamps at the Riverdale property. RSR employed a company known as SLR Technologies to volume reduce the spent lamps. Please see Respondents Exhibit 7. SLR is and was solely owned by one of MVP/RSR's principals known as Larry Kelly. His patented technology (Please see Respondent's Exhibit 8) was specifically authorized by the IEPA after a thorough review in 2000 (Please see Respondent's Exhibit 9). After the volume reduction was completed MVP / RSR would periodically solicit known end users for the volume reduced non-hazardous glass and metal for resale (Please see Respondent's Exhibits 10a and 10b). If there were no markets at the time, and in order to avoid speculative accumulation, MVP / RSR profiled (Please see Respondent's Exhibit 11) and arranged for transportation by licensed waste haulers for the mixed glass and metal under non-hazardous bills of lading in lined and covered roll-offs, as needed, and disposed of the material as non-hazardous waste.

33. Admit

RSR admits to this version. The difference is that MVP / RSR admits to disposing of non-hazardous glass and metal as verses the above statement "subsequent to its crushing of waste lamps" which indicates MVP / RSR performed the volume reduction. MVP / RSR has never volume reduced lamps generated from other small quantity generators.

34. Admit

SLR generated non-hazardous carbon from its volume reduction equipment. Because SLR did not have any place to store the non-hazardous spent carbon, MVP / RSR agreed to warehouse the material until at such time they ordered fresh carbon and traded in the staged spent carbon. (Please see Respondent's Exhibit 12)

35. Deny

MVP / RSR has never disposed of any spent carbon at any landfill. The statement that was made is that if in fact SLR chose to dispose of the spent carbon it could do that under a simple bill of lading at a non-hazardous landfill such as Land and Lakes. The spent carbon does not demonstrate TCLP and can be retorted or exchanged for new carbon at the manufacturer (Please see Respondent's Exhibit 12).

36. Deny

MVP / RSR does not crush spent lamps. MVP / RSR supplies containers to small quantity generators for staging, transports those containers, handles the containers, accumulates lamps and acts as a large quantity generator and handler waiting for volume

reduction to be performed by others and the subsequent potential sale of the volume reduced glass and metal to end users.

37. Admit

38. Admit

39. Deny

MVP / RSR does not crush lamps but did identify and acquired a federal ILD generator number as a large quantity generator. (Please see Respondent's Exhibit 5)

40. Deny

Whole lamps will not fail TCLP. The USEPA publishes on their website in a document titled "Mercury-Containing Light Bulb (Lamp) Frequent Questions" the following statement: "No mercury is released when the bulbs are intact or in use"; exposure is possible only when a bulb has been broken". (Please see Respondent's Exhibit 13) The whole, intact lamps accumulated at the Riverdale, IL property did not demonstrate toxicity. Further, the volume reduced metal and glass do not fail TCLP (Please see Respondent's Exhibit 14). It is well known that mercury containing lamps will fail TCLP if broken in a controlled environment. That is the driver behind the UW rule.

The following is an excerpt from a guidance document published by the USEPA after the Universal Waste Rule 40 CFR 273 became law. The comment specifically addresses the spirit, the intent and the driver behind the rule (Please see Respondent's Exhibit 15):

"Response to Comments Document /Final Rule for Hazardous Waste lamps
General Comments on Universal Waste

The Agency does not agree with the commenter that adding hazardous waste lamps to the universal waste rule does not reduce management requirements. Currently, under RCRA Subtitle C, a solid waste that exhibits the characteristic of toxicity as set forth in 40 CFR 261.24 must be managed as hazardous waste and is subject to full recordkeeping, storage, notification and transportation requirements. Many types of lamps consistently fail the toxicity characteristic test for mercury and some fail for lead and therefore are subject to full RCRA Subtitle C management standards. By adding hazardous waste lamps to the universal waste program, the complexity of managing this type of waste is significantly decreased because the universal waste rule provides a reduced set of requirements (i.e. the universal waste rule is less stringent than full Subtitle C management standards). Handlers will only need to comply with the universal waste standards, rather than full RCRA Subtitle C standards. (i.e. the universal waste rule is less stringent than full Subtitle C management standards)."

MVP / RSR denies the Riverdale property is a "facility" as defined under 35 IAC part 720.110 and 40 C.F.R part 260.10. MVP / RSR denies crushing lamps.

41. Agree

42. Deny

Whole lamps will not fail TCLP. Volume reduced lamps do not fail TCLP. It is well known that mercury containing lamps will fail TCLP if broken in a controlled

environment. That is the driver behind the UW rule. Simply by reviewing the MSDS sheets would have confirmed that most if not all the sampled lamps would fail TCLP including lamps that claim to be environmentally friendly.

The following is an excerpt from a guidance document published by the USEPA after the Universal Waste Rule 40 CFR 273 became law. The comment specifically addresses the spirit, the intent and the driver behind the rule(Please see Respondent's Exhibit 15):

"Response to Comments Document /Final Rule for Hazardous Waste lamps
General Comments on Universal Waste

The Agency does not agree with the commenter that adding hazardous waste lamps to the universal waste rule does not reduce management requirements. Currently, under RCRA Subtitle C, a solid waste that exhibits the characteristic of toxicity as set forth in 40 CFR 261.24 must be managed as hazardous waste and is subject to full recordkeeping, storage, notification and transportation requirements. Many types of lamps consistently fail the toxicity characteristic test for mercury and some fail for lead and therefore are subject to full RCRA Subtitle C management standards. By adding hazardous waste lamps to the universal waste program, the complexity of managing this type of waste is significantly decreased because the universal waste rule provides a reduced set of requirements (i.e. the universal waste rule is less stringent than full Subtitle C management standards). Handlers will only need to comply with the universal waste standards, rather than full RCRA Subtitle C standards. (i.e. the universal waste rule is less stringent than full Subtitle C management standards)."

MVP / RSR denies the Riverdale property is a "facility" as defined under 35 IAC part 720.110 and 40 C.F.R part 260.10.

43. Agree

MVP / RSR did not store hazardous waste.

44. Agree

MVP / RSR did not store hazardous waste

45. Agree

RSR did not store hazardous waste

46. Deny

RSR did not treat hazardous waste.

47. Deny

RSR did not treat hazardous waste.

48. Deny

RSR did not treat hazardous waste.

49. Admit

50. Admit

51. Admit

52. Admit

MVP / RSR admits Universal Waste meets the definition of “solid waste”, however, 40 CFR 261.9 and 35 IAC 721.109 exempt this material from RCRA regulations

Universal Waste is exempt from RCRA regulations, as stated in 40 CFR 261.9:

§ 261.9 Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under parts 262 through 270 of this chapter except as specified in part 273 of this chapter and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under 40 CFR part 273:

(a) Batteries as described in 40 CFR 273.2;

(b) Pesticides as described in §273.3 of this chapter;

(c) Mercury-containing equipment as described in §273.4 of this chapter; and

(d) Lamps as described in §273.5 of this chapter.

The exemption of these types of wastes is mirrored in Illinois Authorized RCRA regulations, at 35 IAC 721.109:

Requirements for Universal Waste

The wastes listed in this Section are exempt from regulation under 35 Ill. Adm. Code 702, 703, 722 through 726, and 728, except as specified in 35 Ill. Adm. Code 733, and are therefore not fully regulated as hazardous waste. The following wastes are subject to regulation under 35 Ill. Adm. Code 733:

a) Batteries, as described in 35 Ill. Adm. Code 733.102;

b) Pesticides, as described in 35 Ill. Adm. Code 733.103;

c) Mercury-containing equipment, as described in 35 Ill. Adm. Code 733.104; and

d) Lamps, as described in 35 Ill. Adm. Code 733.105.

53. Admit

54. Admit

55. Admit

56. Admit

57. Admit

58. Admit

MVP / RSR admits Universal Waste meets the definition of “hazardous waste”, however, 40 CFR 261.9 and 35 IAC 721.109 exempt this material from RCRA regulations
Universal Waste is exempt from RCRA regulations, as stated in 40 CFR 261.9:

§ 261.9 Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under parts 262 through 270 of this chapter except as specified in part 273 of this chapter and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under 40 CFR part 273:

- (a) Batteries as described in 40 CFR 273.2;*
- (b) Pesticides as described in §273.3 of this chapter;*
- (c) Mercury-containing equipment as described in §273.4 of this chapter; and*
- (d) Lamps as described in §273.5 of this chapter.*

The exemption of these types of wastes is mirrored in Illinois Authorized RCRA regulations, at 35 IAC 721.109:

Requirements for Universal Waste

The wastes listed in this Section are exempt from regulation under 35 Ill. Adm. Code 702, 703, 722 through 726, and 728, except as specified in 35 Ill. Adm. Code 733, and are therefore not fully regulated as hazardous waste. The following wastes are subject to regulation under 35 Ill. Adm. Code 733:

- a) Batteries, as described in 35 Ill. Adm. Code 733.102;*
- b) Pesticides, as described in 35 Ill. Adm. Code 733.103;*
- c) Mercury-containing equipment, as described in 35 Ill. Adm. Code 733.104; and*
- d) Lamps, as described in 35 Ill. Adm. Code 733.105*

59. Admit

MVP / RSR admits Universal Waste meets the definition of “hazardous waste”, however, 40 CFR 261.9 and 35 IAC 721.109 exempt this material from RCRA regulations
Universal Waste is exempt from RCRA regulations, as stated in 40 CFR 261.9:

§ 261.9 Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under parts 262 through 270 of this chapter except as specified in part 273 of this chapter and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under 40 CFR part 273:

- (a) Batteries as described in 40 CFR 273.2;*
- (b) Pesticides as described in §273.3 of this chapter;*
- (c) Mercury-containing equipment as described in §273.4 of this chapter; and*
- (d) Lamps as described in §273.5 of this chapter.*

The exemption of these types of wastes is mirrored in Illinois Authorized RCRA regulations, at 35 IAC 721.109:

Requirements for Universal Waste

The wastes listed in this Section are exempt from regulation under 35 Ill. Adm. Code 702, 703, 722 through 726, and 728, except as specified in 35 Ill. Adm. Code 733, and are therefore not fully regulated as hazardous waste. The following wastes are subject to regulation under 35 Ill. Adm. Code 733:

- a) *Batteries, as described in 35 Ill. Adm. Code 733.102;*
- b) *Pesticides, as described in 35 Ill. Adm. Code 733.103;*
- c) *Mercury-containing equipment, as described in 35 Ill. Adm. Code 733.104; and*
- d) *Lamps, as described in 35 Ill. Adm. Code 733.105*

Whole lamps will not fail TCLP. Volume reduced lamps do not fail TCLP. It is well known that mercury containing lamps will fail TCLP if broken in a controlled environment. That is the driver behind the UW rule. Simply by reviewing the MSDS sheets would have confirmed that most if not all the sampled lamps would fail TCLP including lamps that claim to be environmentally friendly.

The following is an excerpt from a guidance document published by the USEPA after the Universal Waste Rule 40 CFR 273 became law. The comment specifically addresses the spirit, the intent and the driver behind the rule (Please see Respondent's Exhibit 15):

*"Response to Comments Document /Final Rule for Hazardous Waste lamps
General Comments on Universal Waste*

The Agency does not agree with the commenter that adding hazardous waste lamps to the universal waste rule does not reduce management requirements. Currently, under RCRA Subtitle C, a solid waste that exhibits the characteristic of toxicity as set forth in 40 CFR 261.24 must be managed as hazardous waste and is subject to full recordkeeping, storage, notification and transportation requirements. Many types of lamps consistently fail the toxicity characteristic test for mercury and some fail for lead and therefore are subject to full RCRA Subtitle C management standards. By adding hazardous waste lamps to the universal waste program, the complexity of managing this type of waste is significantly decreased because the universal waste rule provides a reduced set of requirements (i.e. the universal waste rule is less stringent than full Subtitle C management standards). Handlers will only need to comply with the universal waste standards, rather than full RCRA Subtitle C standards. (i.e. the universal waste rule is less stringent than full Subtitle C management standards)."

60. Admit

61. Deny

MVP / RSR admits accumulating waste lamps at its property for temporary periods of time that were destined for recycling. MVP / RSR denies that it crushed waste lamps at the property. MVP / RSR denies the Riverdale property is a "facility" as defined under 35IAC part 720.110 and 40 C.F.R. part 260.10.

62. Deny

MVP / RSR denies that it crushed waste lamps at the property. MVP / RSR denies the Riverdale property is a “facility” as defined under 35IAC part 720.110 and 40 C.F.R part 260.10.

63. Deny

MVP / RSR denies crushing waste lamps. MVP / RSR admits that TCLP testing of the volume reduced lamps consistently indicated the lamps were not hazardous (Please see Respondent’s Exhibit 14).

64. Deny

MVP / RSR did not crush lamps and the volume reduced lamps pass TCLP. (Please see Respondent’s Exhibit 14)

65. Deny

MVP / RSR did not treat waste lamps.

66. Deny

MVP / RSR denies crushing lamps at the Riverdale property. RSR employed a company known as SLR Technologies to volume reduce the spent lamps. SLR is and was solely owned by one of MVP/RSR’s principals known as Larry Kelly. (Please see Respondents Exhibit 7)His patented technology was specifically authorized by the IEPA after a thorough review in 2000 (Please see Respondents Exhibit 9). After the volume reduction was completed MVP / RSR would periodically solicit known end users for the volume reduced non-hazardous glass and metal for resale (Please see Respondent’s Exhibits 10a and 10b). If there were no markets at the time, and in order to avoid speculative accumulation, MVP / RSR profiled and arranged for transportation by licensed waste haulers for the mixed glass and metal under non-hazardous bills of lading in lined and covered roll-offs, as needed, and disposed of the material as non-hazardous waste (Please see Respondent’s Exhibit 11). The volume reduced lamps were shopped for its marketable value. MVP / RSR denies the Riverdale property is a “facility” as defined under 35IAC part 720.110 and 40 C.F.R part 260.10.

67. Deny

MVP / RSR denies crushing lamps. MVP / RSR has never disposed of any spent carbon at any landfill. The statement that was made is that if MVP / RSR’s vendor, SLR, chose to dispose of the spent carbon it could do that under a simple bill of lading at a non-hazardous landfill such as Land and Lakes. The spent carbon does not demonstrate TCLP and can be retorted or exchanged for new carbon at the manufacturer (Please see Respondent’s Exhibit 12). MVP / RSR denies the Riverdale property is a “facility” as defined under 35IAC part 720.110 and 40 C.F.R part 260.10.

68. Deny

Subsequent to the volume reduction of the spent lamps, MVP / RSR would shop various markets for its reuse (Please see Respondent’s Exhibits 10a and 10b). If it was deemed

that no markets were available at that time MVP / RSR would dispose of the non-hazardous volume reduced glass and metal at a pre-profiled, fully permitted non-hazardous landfill in order to avoid speculative accumulation issues (Please see Respondent's Exhibit 11). MVP / RSR denies the Riverdale property is a "facility" as defined under 35IAC part 720.110 and 40 C.F.R part 260.10.

69. Deny

MVP / RSR never crushed lamps at its property. The volume reduced glass and metal that SLR produced is not "Solid Waste" as defined at 35 IAC 721.102 or 40 CFR 261.2 because it does not demonstrate nor has it ever demonstrated TCLP. The materials in question have always been managed as non-hazardous based on continuous testing of the volume reduced materials for TCLP (Please see Respondent's Exhibit 14). MVP / RSR denies the Riverdale property is a "facility" as defined under 35IAC part 720.110 and 40 C.F.R part 260.10.

70. Deny

MVP / RSR denies crushing lamps. Further, MVP / RSR denies the Riverdale property is a "facility" as defined under 35IAC part 720.110 and 40 C.F.R part 260.10.

The following is an excerpt from a guidance document published by the USEPA after the Universal Waste Rule 40 CFR 273 became law. The comment specifically addresses the spirit, the intent and the driver behind the rule (Please see Respondent's Exhibit 15):

*"Response to Comments Document /Final Rule for Hazardous Waste lamps
General Comments on Universal Waste*

The Agency does not agree with the commenter that adding hazardous waste lamps to the universal waste rule does not reduce management requirements. Currently, under RCRA Subtitle C, a solid waste that exhibits the characteristic of toxicity as set forth in 40 CFR 261.24 must be managed as hazardous waste and is subject to full recordkeeping, storage, notification and transportation requirements. Many types of lamps consistently fail the toxicity characteristic test for mercury and some fail for lead and therefore are subject to full RCRA Subtitle C management standards. By adding hazardous waste lamps to the universal waste program, the complexity of managing this type of waste is significantly decreased because the universal waste rule provides a reduced set of requirements (i.e. the universal waste rule is less stringent than full Subtitle C management standards). Handlers will only need to comply with the universal waste standards, rather than full RCRA Subtitle C standards. (i.e. the universal waste rule is less stringent than full Subtitle C management standards)."

71. Deny

MVP / RSR did not crush lamps. RSR identified and acquired a federal large quantity generator ID in accordance with published rules found at 40 CFR 273 and 35 IAC 733, allowing for accumulation of more than 5,000 kg of spent lamps (Please see Respondent's Exhibit 5). Whole lamps do not fail TCLP (Please see Respondent's Exhibit 13), volume reduced lamps pass TCLP (Please see Respondent's Exhibit 14), only lamps that are broken in a confined space and held there for testing may fail TCLP.

The following is an excerpt from a guidance document published by the USEPA after the Universal Waste Rule 40 CFR 273 became law. The comment specifically addresses the spirit, the intent and the driver behind the rule (Please see Respondent's Exhibit 15):

*"Response to Comments Document /Final Rule for Hazardous Waste lamps
General Comments on Universal Waste*

The Agency does not agree with the commenter that adding hazardous waste lamps to the universal waste rule does not reduce management requirements. Currently, under RCRA Subtitle C, a solid waste that exhibits the characteristic of toxicity as set forth in 40 CFR 261.24 must be managed as hazardous waste and is subject to full recordkeeping, storage, notification and transportation requirements. Many types of lamps consistently fail the toxicity characteristic test for mercury and some fail for lead and therefore are subject to full RCRA Subtitle C management standards. By adding hazardous waste lamps to the universal waste program, the complexity of managing this type of waste is significantly decreased because the universal waste rule provides a reduced set of requirements (i.e. the universal waste rule is less stringent than full Subtitle C management standards). Handlers will only need to comply with the universal waste standards, rather than full RCRA Subtitle C standards. (i.e. the universal waste rule is less stringent than full Subtitle C management standards)."

72. Deny

MVP / RSR denies engaging in "storage" of hazardous waste. MVP / RSR accumulated Universal Waste lamps at the Riverdale property in accordance with requirements at 35 IAC Part 733 Subpart C and 40 CFR Part 273 Subpart C. Universal Waste is exempt from RCRA regulations at 40 CFR 261.9 and 35 IAC 721.109. Further, MVP / RSR denies the Riverdale property is a "facility" as defined under 35 IAC part 720.110 and 40 C.F.R part 260.10.

73. Deny

MVP / RSR denies crushing waste lamps. MVP / RSR accumulated whole, intact Universal Waste lamps at the Riverdale property in accordance with requirements at 35 IAC Part 733 Subpart C and 40 CFR Part 273 Subpart C. Further, as noted by the USEPA on their website, "No mercury is released when the bulbs are intact or in use; exposure is possible only when a bulb has been broken" (Please see Respondent's Exhibit 13) Whole, intact lamps will not demonstrate toxicity.

74. Deny

MVP / RSR denies engaging in "treatment" of hazardous waste. Further, MVP/ RSR denies the Riverdale property is a "facility" as defined under 35 IAC part 720.110 and 40 C.F.R part 260.10.

75. Agree

76. Deny

MVP/ RSR denies treatment of hazardous waste. MVP / RSR denies the Riverdale property is a "facility" as defined under 35 IAC part 720.110 and 40 C.F.R part 260.10.

MVP / RSR denies violating 35 IAC Part 703.121 (a)(1) based on the fact that this type of waste is exempt from 35 IAC 703, as mentioned at 35 IAC 721.109.

77. Deny

MVP / RSR denies violating 35 IAC Part 703.121 (a)(1) based on the fact that this type of waste is exempt from 35 IAC 703, as mentioned at 35 IAC 721.109.

78. Deny

MVP / RSR denies violating 35 IAC Part 703.121 (a)(1) based on the fact that this type of waste is exempt from 35 IAC 703, as mentioned at 35 IAC 721.109.

79. Deny

MVP / RSR denies violating 35 IAC Part 703.121 (a)(1) based on the fact that this type of waste is exempt from 35 IAC 703, as mentioned at 35 IAC 721.109.

80. Deny

MVP / RSR denies violating 35 IAC Part 703.121 (a)(1) based on the fact that this type of waste is exempt from 35 IAC 703, as mentioned at 35 IAC 721.109. MVP / RSR denies any civil penalty is appropriate.

81. Deny

MVP / RSR denies violating 35 IAC Part 703.121 (a)(1) based on the fact that this type of waste is exempt from 35 IAC 703, as mentioned at 35 IAC 721.109.

82. Deny

MVP / RSR denies violating 35 IAC Part 703.121 (a)(1) based on the fact that this type of waste is exempt from 35 IAC 703, as mentioned at 35 IAC 721.109. MVP / RSR managed these wastes in accordance with regulations published at 40 CFR 273 and 35 IAC 733. Per the USEPA's media advisory and press release, "EPA immediately sent inspectors to the site to monitor air quality inside and outside the facility. They found no evidence that River Shannon posed a public health threat from mercury emissions" (Please see Respondent's Exhibit 16a and 16b). MVP / RSR denies a need to comply with the requirements of this Compliance Order from Count 82 through 110.

MVP / RSR ceased operations at the Riverdale property on or about April of 2008, had removed and recycled all Universal Waste onsite at the time of the Complainant's CEI by October 2008 and had turned the property back to the landlord in January 2009, pursuant to an agreement reached with the Village of Riverdale in Federal Court (Please see Respondent's Exhibit 17). In response to a request for additional information made by the USEPA on October 3, 2008, 11 months after their initial CEI, MVP / RSR notified the USEPA on October 20, 2008 that they had ceased operations at the Riverdale facility and had removed and recycled all materials, and supplied the USEPA with both Bills of Lading and scale tickets from the Land and Lakes landfill. The specifics of the USEPA's request can be found in (Please see Respondent's Exhibit 18), which MVP / RSR responded to in a timely fashion (Please see Complainant's Exhibit 8). The USEPA was

made aware that MVP / RSR had ceased operations at the Riverdale property by the response and documentation provided to the USEPA on October 20, 2008, 18 months prior to the USEPA's request to cease and desist operation at the Riverdale property noted in the USEPA's Administrative Complaint and Compliance Order dated April 23, 2010.

Further, MVP / RSR is no longer a viable corporation in the State of Illinois, as it was involuntarily dissolved on or about March 12, 2010.

83. Deny

84. Deny

85. Deny

86. Deny

87. Deny

88. Deny

89. Deny

90. Deny

91. Deny

92. Deny

93. Deny

94. Deny

95. Deny

96. Deny

97. Deny

98. Deny

99. Deny

100. Deny

101. Deny

102. Deny

103. Deny

104. Deny

105. Deny

106. Deny

107. Deny

108. Deny

109. Deny

110. Deny

IN THE MATTER OF:) **DOCKET NO.**
)
Mercury Vapor Processing) **RCRA-05-2010-0015**
Technologies Inc., aka River)
Shannon Recycling)
13605 S. Halsted St.)
Riverdale, Illinois 60827)
)
Respondent)

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Region V

Certificate of Service

I hereby certify that the following **Responses to Administrative Complaint and Compliance Order and Motion to Amend Answers** were sent this day in the following manner to the addressees listed below.

10/27/10
 Date

LC Kelly
 Laurence C. Kelly

Mercury Vapor Processing Technologies, Inc.

One Original and One Copy by Fedex Delivery to:
 LaDawn Whitehead
 Regional Hearing Clerk
 U.S. EPA, Region V, MC-E-19J
 77 West Jackson Blvd.
 Chicago, IL 60604-3590

Copy by Fedex Delivery to:
 Thomas Williams

Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, IL 60604-3590

Copy by Fedex Delivery to:
Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, NW, Suite 350
Washington, DC 20005