

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of :
 :
Paint Over Rust Products, Inc., :
 :
Respondent. : **CONSENT AGREEMENT/FINAL ORDER**
 : Docket No. EPCRA-02-2019-4201
 :
 :
Proceeding under Section 325(c) :
of Title III of the Superfund :
Amendments and Reauthorization Act :
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PRELIMINARY STATEMENT

This civil administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001, et seq, (also known as the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”)). Pursuant to Section 22.13(b) of Title 40 of the Code of Federal Regulations (“C.F.R.”) of the Consolidated Rules of Practice, where the parties agree to settlement of causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3). This administrative proceeding constitutes one that is being simultaneously commenced and concluded pursuant to said provisions.

Complainant and Respondent agree that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been judicially or administratively adjudicated.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Paint Over Rust Products, Inc. (formerly Absolute Coatings, Inc.), a corporation organized pursuant to the laws of the State of New York.
2. Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 372.3.
3. Respondent is an owner and/or operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3, located at 38 Portman Road, New Rochelle, NY 10801 (hereinafter the "Facility").
4. The Facility:
 - a. is classified by NAICS Code 325510 (Paint and Coating Manufacturing);
 - b. has employed at all times relevant more than 10 employees; and
 - c. processes diisocyanates and, at all times relevant, has processed diisocyanates in amounts over the applicable reporting threshold of 25,000 pounds.
5. As a consequence of its activities at the Facility, Respondent is, and was during all times relevant, subject to the requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereto and set forth at 40 C.F.R. Part 372.
6. For each of reporting years 2015, 2016, and 2017, the Facility was required to, but failed to, submit Form A or Form R reports for diisocyanates. The Facility later submitted Form R reports for diisocyanates, for each of those reporting years, on May 30, 2019.

7. Respondent failed, in a timely manner, to submit to the Administrator and to the State of New York, a complete and correct Form R or Form A for each of the above-described toxic chemicals.

8. Respondent's failure to timely submit Toxic Chemical Release Inventory Forms for its facility constituted violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense, or uncertainty of a formal adjudicatory hearing on the merits, knowingly and voluntarily: (a) admits the jurisdictional allegations in EPA's Findings of Fact; (b) neither admits nor denies specific factual allegations contained in EPA's Findings of Fact; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall hereinafter maintain compliance with all applicable provisions and statutory requirements of EPCRA and the implementing regulations.

2. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is now in full compliance with the provisions and statutory requirements of EPCRA that are applicable to Respondent's activities relating to EPCRA Toxic Chemical Release reporting requirements.

3. Respondent shall pay a civil penalty to EPA in the total amount of **NINETEEN THOUSAND EIGHT HUNDRED DOLLARS (\$19,800)**. The payment may be split into two (2) equal half payments, each of **NINE THOUSAND NINE HUNDRED DOLLARS (\$9,900)**. The split payments shall be received by EPA according to the calendar days schedule described in Paragraph 4 below. Such payment(s) shall be made by cashier's or certified check(s) or electronically by Fedwire. If payment(s) is/are made by check, then the check(s) 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**

The check(s) shall be identified with a notation thereon listing the following: ***In the Matter of Paint Over Rust Products, Inc.***, and shall bear thereon the **Docket No. EPCRA-02-2019-4201**.

If Respondent chooses to make payment(s) by Fedwire, 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 **D 68010727** Environmental Protection Agency.
- 6) Name of Respondent: **Paint Over Rust Products, Inc.**
- 7) Case Number: **EPCRA-02-2019-4201.**

4. The first half payment amounting to Nine Thousand Nine Hundred Dollars (\$9,900) shall be received (if made by check) or effected (if implemented electronically) within thirty (30) calendar days after the Effective Date of this CA/FO. (The date by which each payment must be received shall hereinafter be referred to as the "due date".) The second half payment amounting to Nine Thousand Nine Hundred Dollars (\$9,900) shall be received within one hundred and eighty (180) calendar days after the Effective Date of this CA/FO.

a. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.

b. Furthermore, if payment(s) is/are not made on or before the date(s) specified in this document, interest for said payment(s) shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date(s) said payment(s) was/were required to have been made through the date(s) said payment(s) has/have been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment(s) was/were to have been made, in which payment of the amount remains in arrears.

c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty

charge on the debt will accrue from the date the total penalty payment becomes due and is not paid.

5. The civil penalty (including any payment of interest or late payment handling charge that come due) herein constitutes a “penalty” within the meaning of 26 U.S.C. § 162(f), and is not a deductible expenditure for purposes of federal or state law.

6. Complainant shall mail to Respondent (to the representatives designated in Paragraph 7, below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.

7. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

James Crossmon
Toxics Compliance Section
US Environmental Protection Agency
2890 Woodbridge Avenue (MS-225)
Edison, NJ 08837

EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to the Respondent, at the following address:

David Sherman, President/Owner
Paint Over Rust Products, Inc.
38 Portman Road
New Rochelle, NY 10801

8. Full payment of the penalty described in Paragraph 3, above, shall only resolve Respondent’s liability for federal civil penalties for the violations and facts alleged in this CA/FO. Full payment of this penalty shall not preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

9. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder or with any applicable federal, state, or local rules, regulations, and laws. Nothing in this document is intended nor shall be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.

10. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.

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

12. Respondent waives its right to request a hearing on this Consent Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.

13. The signatory for the Respondent certifies that: (a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and (b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

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

15. Pursuant to 40 C.F.R. § 22.31(b), the Effective Date of the Consent Agreement and Final Order herein shall be the date when the Final Order is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In the Matter of Paint Over Rust Products, Inc.

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RESPONDENT: **PAINT OVER RUST PRODUCTS, INC.**

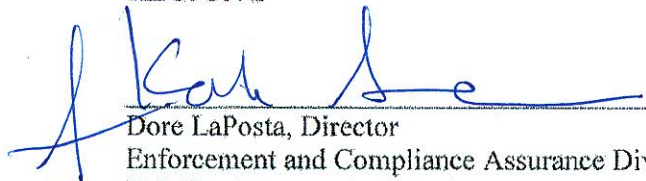
BY: 
Authorizing Signature

NAME: David Sherman
(PLEASE PRINT)

TITLE: CEO

DATE: 8/26/19

COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**


Dore LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: **SEP - 4 2019**

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FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued, as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, NY.



Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: September 10, 2019

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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

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

Copy by Certified Mail

Return Receipt Requested:

David Sherman, President/Owner
Paint Over Rust Products, Inc.
38 Portman Road
New Rochelle, NY 10801

Copy by Mail:

Helen C. Mauch, Esq., Partner
Attorney for Respondent
Zarin & Steinmetz
81 Main Street, Suite 415
White Plains, NY 10601

Henry Wilkie
Manifest & Reporting
Bureau of Program Management
Division of Environmental Remediation
NY State Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, NY 12233-7252

Date:

9/11/2019
Edison, NJ

James Crossman