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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**In the Matter of:**

PPG Industries, Inc. d/b/a PPG Paints,

**Respondent.**

)  
)  
)  
) **Docket No. RCRA-07-2018-0245**  
)  
)

**CONSENT AGREEMENT AND FINAL ORDER**

**PRELIMINARY STATEMENT**

The U.S. Environmental Protection Agency (EPA), Region 7 ("Complainant") and PPG Industries, Inc. d/b/a PPG Paints ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2).

**ALLEGATIONS**

**Jurisdiction**

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA"), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Sections 3002 and 3005 of RCRA, 42 U.S.C §§ 6922 and 6925, and the standards applicable to generators of hazardous waste (40 C.F.R. § 262).

**Parties**

3. Complainant is the Branch Chief of the Waste Enforcement and Materials Management branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated by the Administrator of EPA.
4. Respondent is PPG Industries, Inc. d/b/a PPG Paints, a Pennsylvania corporation authorized to operate under the laws of Iowa.

### Statutory and Regulatory Framework

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 2002, 3001, 3002, 3003, 3004, 3005, 3007 and 3010 of RCRA, 42 U.S.C. §§ 6912, 6921, 6922, 6923, 6924, 6925, 6927, and 6930, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 239 through Part 282.

7. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

8. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

10. Section 1004(15) of RCRA, 7 U.S.C. § 6903(15), defines "person" as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

11. The regulation at 40 C.F.R. § 260.10 defines "facility" to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

12. The regulation at 40 C.F.R. § 260.10 defines "treatment" as any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste

non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amendable for recovery, amendable for storage, or reduced in volume.

13. "Solid waste" is defined at 40 C.F.R. § 261.2.
14. "Hazardous waste" is defined at 40 C.F.R. § 261.3.
15. The regulation at 40 C.F.R. § 260.10 defines "generator" as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.
16. The regulation at 40 C.F.R. § 260.10 defines "large quantity generator" as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).
17. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period.
18. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$97,229 for violations that occur after November 2, 2015, and are assessed after January 15, 2018. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

#### **General Factual Background**

19. Respondent is a corporation and authorized to conduct business within the State of Iowa. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
20. Respondent is a global supplier of paints, coatings, and specialty materials with thousands of employees. Respondent owns and operates a facility located at 4525 NE 14<sup>th</sup> Street, Des Moines, Iowa 50313 ("facility"), which employs approximately 5 people.
21. On or about March 10, 2008, Respondent notified EPA, pursuant to Section 3010

of RCRA, 42 U.S.C. § 6930, as a Large Quantity Generator (“LQG”) of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.

22. On or about July 18, 2017, EPA representatives conducted a RCRA Compliance Evaluation Inspection (“inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as an episodic LQG of hazardous waste.

23. At the time of the inspection, it was determined that Respondent was generating the following waste streams, among others, in the paint mixing and spraying equipment process, which are solid and hazardous wastes as defined at 40 C.F.R. § 261.2 and 261.3:

- (a) Spent xylene solvent, waste codes D001 and F003, used to clean paint equipment, contained in a 1-gallon satellite accumulation container in the area where aerosol cans are filled;
- (b) Xylene contaminated wipes, waste codes D001 and F003, used to clean paint mixing and spraying equipment, which are taken outside and dried on a wooden pallet and then disposed in the general trash;
- (c) Xylene contaminated wipes, waste codes D001 and F003, contained in two, 5-gallon satellite accumulation containers adjacent to the paint booth and paint mixing areas; and
- (d) Mistinted paint, waste codes D001, D005, D006, D007, D008, D011, and/or D035, in containers.

24. Respondent has been assigned the following EPA ID Number: IAR000509547.

### Violations

25. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

#### Count 1

#### Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

26. Complainant hereby incorporates the allegations contained above, as if fully set forth herein.

27. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

28. At the time of the inspection, Respondent did not have a permit or interim status.

#### **Treatment of Hazardous Waste Without a Permit**

29. Section 3005 of RCRA, 42 U.S.C. § 6925, prohibits the treatment, storage, or disposal of hazardous waste without a RCRA permit.

30. At the time of the inspection, it was determined that Respondent had been allowing xylene contaminated wipes to evaporate prior to disposal as solid waste.

31. By allowing excess liquid to evaporate, Respondent was engaged in "treatment" of a hazardous waste within the meaning of 40 C.F.R. § 260.10.

32. Respondent has never obtained a permit to operate a hazardous waste treatment, storage or disposal facility pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925.

33. Respondent's treatment of hazardous waste constitutes the operation of a hazardous waste treatment, storage, or disposal facility without a permit, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

#### **Generator Requirements**

34. The regulations at 40 C.F.R. § 262.17 state that an LQG may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, and without complying with the requirements of parts 124, 264 through 267, and 270 of Chapter I, or the notification requirements of section 3010 of RCRA, provided the conditions listed in 40 C.F.R. § 262.17(a)(1)-(9) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at its facility for any length of time. Respondent failed to comply with the following conditions:

##### *Failure to make and document arrangements with emergency response agencies*

35. The regulation at 40 C.F.R. § 262.17(a)(6) requires an LQG to comply with the standards of Subpart M of 40 C.F.R. Part 262.

36. Pursuant to 40 C.F.R. §§ 262.256(a) and (b), found in Subpart M of 40 C.F.R. Part 262, an LQG must attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility, and maintain records documenting such arrangements.

37. The inspection revealed that Respondent failed to make and document arrangements with emergency response agencies.

*Failure to maintain a RCRA contingency plan*

38. The regulation at 40 C.F.R. § 262.17(a)(6) requires an LQG to comply with the standards of Subpart M of 40 C.F.R. Part 262.

39. Pursuant to 40 C.F.R. § 262.260(a), found in Subpart M of 40 C.F.R. Part 262, an LQG must have a contingency plan for the facility, designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

40. The inspection revealed that Respondent failed to have a contingency plan for the facility.

*Failure to conduct initial and annual review training of personnel regarding hazardous waste management procedures*

41. The regulation at 40 C.F.R. § 262.17(a)(7) requires an LQG to ensure that facility personnel successfully complete a program of classroom instruction, online training, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with 40 C.F.R. Part 262.

42. The inspection revealed that Respondent failed to conduct initial and annual review training of facility personnel regarding hazardous waste management procedures.

43. Because Respondent failed to comply with the generator requirements as set forth above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

**Count 2**  
**Manifest Violations**

44. Complainant hereby incorporates the allegations contained above, as if fully set forth herein.

45. The regulations at 40 C.F.R. § 262.20(a), require that a generator who transports, or offers to transport a hazardous waste for offsite treatment, storage, or disposal must prepare a manifest using EPA forms which require the use of the correct EPA identification number.

46. The inspection revealed that Respondent failed to use the correct EPA identification number on eight separate manifests between 2013 and 2015.

47. Respondent's failures to use the correct EPA identification number on eight separate manifests between 2013 and 2015 are violations of 40 C.F.R. § 262.20(a).

48. The regulation at 40 C.F.R. § 262.40(a) requires a generator of hazardous waste to keep a copy of each manifest signed in accordance with 40 C.F.R. § 262.23(a) for three years.

49. The inspection revealed that Respondent failed to retain a copy of a December 18, 2015 manifest signed in accordance with 40 C.F.R. § 262.23(a) for three years.

50. Respondent's failure to retain a copy of a December 18, 2015 manifest signed in accordance with 40 C.F.R. § 262.23(a) for three years is a violation of 40 C.F.R. § 262.40(a).

**Count 3**  
**Failure to Submit 2014 and 2016 Biennial Reports**

51. Complainant hereby incorporates the allegations contained above, as if fully set forth herein.

52. The regulation at 40 C.F.R. § 262.41 requires LQGs that shipped any hazardous waste off-site to a treatment, storage, or disposal facility within the United States to prepare and submit a Biennial Report to EPA every even year on March 1, covering the previous year.

53. The inspection revealed that Respondent operated as an LQG at the facility in 2013, 2014, 2015, and 2016, but did not submit a Biennial Report in 2014 or 2016.

54. Respondent's failures to submit Biennial Reports in 2014 and 2016 are violations of 40 C.F.R. § 262.41.

**CONSENT AGREEMENT**

55. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and

(h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

56. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

57. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

58. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

#### **Penalty Payment**

59. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Twelve Thousand Eight Hundred Thirty-Eight Dollars (\$12,838).

60. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

61. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Britt Bieri, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

62. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall



begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

#### **Effect of Settlement and Reservation of Rights**

63. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

64. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

65. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

66. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

67. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Fifty-Eight Thousand Five Hundred Sixty-Two Dollars (\$58,562) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

68. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

69. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

70. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

### **General Provisions**

71. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

72. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

73. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

74. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.


75. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

76. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.


COMPLAINANT:

**U.S. Environmental Protection Agency**

9/25/2018  
Date

  
\_\_\_\_\_  
John Smith, Acting Branch Chief  
Waste Enforcement and Materials Management Branch  
Air and Waste Management Division


9/25/18  
Date

  
\_\_\_\_\_  
Britt Bieri  
Office of Regional Counsel

RESPONDENT:

**PPG Industries, Inc. d/b/a PPG Paints**

9/14/2018  
Date

  
Signature

Donna Broom e  
Printed Name

V.P. Stores & Dealers AC NA  
Title

**FINAL ORDER**

Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Sept. 27, 2018  
Date

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via email to Complainant:

Britt Bieri

Copy via first class mail to Respondent:

PPG Paints  
4525 NE 14<sup>th</sup> Street  
Des Moines, Iowa 50313

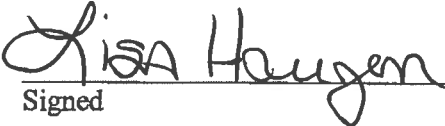
Copy via email to Respondent's counsel:

Steven Faeth  
Corporate Counsel EHS  
PPG Industries

Copy via email to the State of Iowa:

Amie Davidson, Chief  
Contaminated Sites Section  
Iowa Department of Natural Resources

Dated this 27<sup>th</sup> day of September, 2018.

  
Signed \_\_\_\_\_