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

IN THE MATTER OF:

Diamond-Vogel Paint Company, Inc.

Respondent

Proceeding under Sections 3008(a) and (g) of
the Resource Conservation and Recovery Act
as amended, 42 U.S.C. § 6928(a) and (g)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2016-0001

I. PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (Complainant) and Diamond-Vogel Paint Company, Inc. (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, Issuance of Compliance or Corrective Action Orders, 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).

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Section 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. This authority has been delegated by the Administrator of EPA to the Regional Administrator and further delegated to the Director of the Air and Waste Management Division.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C § 6925.

Parties

3. Complainant is the Division Director of the Air and Waste Management Division of EPA, Region 7, as duly delegated from the Administrator of EPA.

4. Respondent is Diamond-Vogel Paint Company, Inc., a corporation authorized to operate under the laws of Iowa.

Statutory and Regulatory Framework

5. When EPA determines that any person has violated or is in violation of any RCRA requirement, 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 pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

6. 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). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized. 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), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, 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

7. 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).

8. Respondent's facility is located at 1506 Bluff Road, Burlington, Iowa. Respondent manufactures and distributes water-based and solvent-based paints and coatings. Respondent employs approximately fourteen people.

9. At the time of the inspection, the following solid wastes were present:

- a. Waste paint-related material (WPRM) accumulating in five satellite accumulation areas (SAA), the primary container storage area (CSA) and the mixing area; and
- b. Approximately 125 containers in a facility outbuilding which contained

9,625 gallons of off-specification waste.

10. At the time of the inspection, the following hazardous waste(s) were present:
- a. WPRM which is a D001, F003 and F005 waste; and
 - b. Off-specification waste which is D001, F003 and F005 waste.

11. In May 2011, Respondent notified as a Large Quantity Generator (LQG) of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930. LQGs generate 1,000 kilograms per month or more of hazardous waste, or more than 1 kilogram per month of acutely hazardous waste.

12. Respondent has been assigned the following EPA ID Number: IAD055803423.

13. On or about March 21, 2012, a representative of EPA conducted a RCRA Compliance Evaluation Inspection (hereinafter "the 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 a Large Quantity Generator of hazardous waste and a Small Quantity Handler of universal waste.

Violations

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

Count 1

Failure to Conduct Hazardous Waste Determination

15. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 13 above, as if fully set forth herein.

16. Pursuant to 40 C.F.R. § 262.11, a generator of solid waste, as defined in 40 C.F.R. §§ 260.10 and 261.2, must determine if that waste is a hazardous waste using methods prescribed in the regulations.

17. At the time of the inspection, it was determined that Respondent was generating and accumulating approximately 125 containers of off-specification solid waste in a facility outbuilding. These containers contained approximately 9,625 gallons of off-specification solid waste.

18. At the time of the inspection, Respondent had not conducted hazardous waste determinations on the solid waste stream described in Paragraph 17 above.

19. Respondent's failure to perform a hazardous waste determination on the above-referenced solid waste stream is a violation of 40 C.F.R. § 262.11.

Count 2

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

20. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 13 above, as if fully set forth herein.

Generator Requirements

21. The regulations at 40 C.F.R. § 262.34(a) state that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(a)(1)-(4) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to store hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions:

Failure to conduct weekly hazardous waste inspections

22. The regulations at 40 C.F.R. § 262.34(a)(1)(i) require that while being accumulated on-site, the hazardous waste must be placed in containers and the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

23. Pursuant to 40 C.F.R. § 265.174, as found in 40 C.F.R. Part 265 Subpart I, the owner or operator must inspect, at least weekly, areas where containers of hazardous waste are stored, looking for leaking containers and deteriorating containers caused by corrosion or other factors.

24. At the time of the inspection, Respondent's representative stated that weekly inspections were not performed in the mixing area.

Failure to close hazardous waste accumulation containers

25. The regulations at 40 C.F.R. § 262.34(a)(1)(i) require that while being accumulated on-site, the hazardous waste must be placed in containers and the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

26. Pursuant to 40 C.F.R. § 265.173(a), as found in 40 C.F.R. § 265 Subpart I, generators must close hazardous waste storage containers during storage.

27. At the time of the inspection, one 55-gallon container of WPRM in the mixing area CSA was not properly closed.

Failure to date hazardous waste accumulation containers

28. The regulations at 40 C.F.R. § 262.34(a)(2) require generators to clearly mark the date upon which each period of accumulation began on each container.

29. At the time of the inspection, approximately 125 containers ranging in size from 55-gallons to 300-gallons in a facility outbuilding were not marked with the date upon which accumulation began. These containers collectively contained approximately 9,625-gallons of off-specification hazardous waste.

Failure to label hazardous waste accumulation containers

30. The regulations at 40 C.F.R. § 262.34(a)(3) require generators to clearly mark each container of hazardous waste with the words "Hazardous Waste" while accumulating on-site.

31. At the time of the inspection, the following hazardous waste accumulation containers were not marked with the words "Hazardous Waste":

- a. Two 55-gallon containers of WPRM in the mixing area CSA; and
- b. Approximately 125 containers ranging in size from 55-gallons to 300-gallons in a facility outbuilding. These containers collectively contained approximately 9,625-gallons of off-specification hazardous waste.

Failure to clearly identify secondary and/or alternate emergency coordinators in contingency plan

32. The regulations at 40 C.F.R. § 262.34(a)(4) require, in part, that the generator comply with the requirements of Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

33. Pursuant to 40 C.F.R. § 265.52(d), as found in 40 C.F.R. § 265 Subpart D, the owner or operator must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and the others must be listed in the order in which they will assume responsibility as alternates.

34. At the time of the inspection, the contingency plan included two pages which identified the secondary and/or alternate emergency coordinators. These pages identified different personnel as the secondary and/or alternative emergency coordinators. Therefore, the contingency plan failed to clearly identify the secondary and/or alternate emergency coordinators in the most up to date contingency plan.

Satellite Accumulation

35. The regulations at 40 C.F.R. § 262.34(c)(1) allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers at or near any point of generation where waste initially accumulates,

which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with § 262.34(a) provided the generator comply with various handling requirements. This type of accumulation is known as “satellite accumulation”. At the time of the inspection, Respondent failed to comply with the following satellite accumulation requirement:

Failure to close satellite accumulation containers

36. The regulations at 40 C.F.R. § 262.34(c)(1)(i) referencing 40 C.F.R. § 265.173(a) allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste in a satellite accumulation area, provided the container holding hazardous waste is always closed during storage, except when it is necessary to add or remove waste.

37. At the time of the inspection, the following satellite accumulation containers containing hazardous waste were open:

- a. One 55-gallon container of WPRM labeled “off-spec resin and solvent” in the mixing area;
- b. One 55-gallon container of WPRM labeled “off-spec resin” located under a draining rack used to clean or draw raw material containers; and
- c. One 5-gallon container of WPRM labeled “MEK wash” located in the laboratory.

38. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 20 through 37 above, Respondent was not authorized to store hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit.

CONSENT AGREEMENT

39. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

40. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

41. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

42. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

43. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

44. 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.

45. This Consent Agreement and Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

46. The effect of settlement described in Paragraph 45 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 47, below, of this Consent Agreement and Final Order.

47. Respondent certifies that by signing this Consent Agreement and Final order that to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

48. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

49. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Twenty-One Thousand Seven Hundred Dollars (\$21,700) as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order, below.

50. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

51. 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 cited in Paragraph 49.

52. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury Tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorney fees. In addition, 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. § 901.9(c) and (d).

53. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate

Effective Date

54. This Consent Agreement and Final Order shall be effective upon 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.

Reservation of Rights

55. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion 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 Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

56. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

57. 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.

58. 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 future 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.

59. 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.

60. 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.

FINAL ORDER

Pursuant to the authority of Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent will pay a civil penalty of Twenty-One Thousand Seven Hundred Dollars (\$21,700).

2. Payment of the penalty shall be made by cashier or certified check, by wire transfer, or on-line. The Payment shall reference the Docket Number on the check or wire transfer. If made by cashier or certified check, the check shall be made payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

On-line payments are available through the Department of Treasury:

www.pay.gov
Enter "sfo 1.1" in the search field.
Open the form and complete required files.

3. A copy of the check, transfer, or on-line payment confirmation shall simultaneously be sent to the following:

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

Kelley Catlin
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

5. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below:

6. Within thirty (30) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit the following:

- a. Photographs documenting that each onsite satellite accumulation container is closed in accordance with 40 C.F.R. § 262.34(c)(1)(i) referencing 40 C.F.R. § 265.173(a);
- b. Photographs documenting that each onsite hazardous waste storage container is closed in accordance with 40 C.F.R. § 262.34(c)(1)(i) referencing 40 C.F.R. § 265.173(a); and
- c. Photographs documenting each onsite hazardous waste storage container is labeled with the words, "Hazardous Waste" in accordance with 40 C.F.R. § 262.34(a)(3).

7. Within sixty (60) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall provide a current copy of the facility's contingency plan which demonstrates that it meets all the requirements listed for 40 C.F.R. Part 265 Subpart D in accordance with 40 C.F.R. § 262.34(a)(4) referencing 40 C.F.R. § 265.52(d).

8. Within One Hundred Twenty (120) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit documentation that it has performed weekly inspections for three (3) months for each hazardous waste storage area onsite in accordance with 40 C.F.R. § 262.34(a)(1)(i) referencing 40 C.F.R. § 265.174.

9. Respondent shall submit all documentation generated to comply with the requirements as set forth in Paragraphs 6 - 8 of this Final Order to the following email address:

Kevin Snowden: snowden.kevin@epa.gov

B. Parties Bound

10. The Final Order portion of 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.

FOR THE COMPLAINANT,

U.S. ENVIRONMENTAL PROTECTION AGENCY

1-25-16
Date:

Becky Weber
Becky Weber, Division Director
Air and Waste Management Division

1/25/16
Date:

Kelley Catlin
Kelley Catlin
Office of Regional Counsel

FOR THE RESPONDENT,

DIAMOND-VOGEL PAINT COMPANY, INC.

12.17.2015

Date:



Signature

SCOTT HEEMSTRA

Printed Name

DIR OF MFG.

Title

IT IS SO ORDERED.

This Final Order shall become effective upon filing.

1-28-16

Date:

Karina Borrromeo

Karina Borrromeo
Regional Judicial Officer

IN THE MATTER Of Diamond-Vogel Paint Company, Inc., Respondent
Docket No. RCRA-07-2016-0001

CERTIFICATE OF SERVICE

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

Copy emailed to Attorney for Complainant:

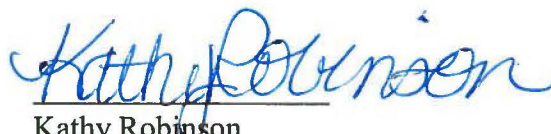
catlin.kelley@epa.gov

Copy by First Class Mail to Respondent:

James L. Pray

666 Grand Avenue
Suite 2000 Ruan Center
Des Moines, IA 50309

Dated: 2/1/16



Kathy Robinson

Hearing Clerk, Region 7