



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 28 2018

REPLY TO THE ATTENTION OF:

VIA EMAIL

Mr. Donald P. Gallo
Husch Blackwell, LLP
20800 Swenson Drive, Suite 300
Waukesha, Wisconsin 53186

Re: Consent Agreement and Final Order
C. Nelson Enterprises, Inc., d/b/a Quality Paint and Coatings
Docket No: RCRA-05-2018-0009

Dear Mr. Gallo:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed with the Regional Hearing Clerk on March 28, 2018.

Please instruct your client to pay the civil penalty in the amount of \$17,991 in the manner prescribed in paragraph 71 of the CAFO, and reference all checks with the docket number RCRA-05-2018-0009. The payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Gary J. Victorine".

Gary J. Victorine, Chief
RCRA Branch

Enclosure

cc: Michael Ellenbecker, WDNR (michael.ellenbecker@wisconsin.gov)
Steven Sisbach, WDNR (steven.sisbach@wisconsin.gov)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2018-0009
)	
C. Nelson Enterprises, Inc., d/b/a)	
Quality Paint and Coatings)	Proceeding to Commence and Conclude
Oshkosh, Wisconsin)	an Action to Assess a Civil Penalty
)	Under Section 3008(a) of the Resource
U.S. EPA ID No.: WI0001003078)	Conservation and Recovery Act,
)	42 U.S.C. § 6928(a)
Respondent.)	
_____)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Wisconsin pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is C. Nelson Enterprises, Inc., d/b/a/ Quality Paint and Coatings, a corporation doing business in the State of Wisconsin.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003 and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the

federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3783 (January 31, 1986). Wisconsin's RCRA regulations under its approved state program are currently promulgated at Wisconsin Administrative Code (WAC) Chapters NR 660-679.

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

16. The Administrator of U.S. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009 through November 2, 2015, and a civil penalty of up to \$95,284 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015 for which penalties are assessed on or after January 15, 2017, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. Respondent was and is a "person" as defined by WAC NR 660.10(90), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent is the “owner” or “operator” of a “facility” located at 2236 Clairville Road, Oshkosh, Wisconsin, 54904 (facility), as those terms are defined under WAC NR 660.10 and 40 C.F.R. § 260.1.

19. On January 31, 2017, U.S. EPA conducted an inspection of the facility.

20. The facility consists of land and structures, other appurtenances, and improvements on the land used for storing of hazardous waste.

21. At the facility, Respondent provides painting and specialty coating services for commercial and military vehicles and equipment.

22. At all times relevant to this CAFO, Respondent generated and continues to generate various wastes including waste paints, solvents and paint-solvent mixtures, waste solution from a chromium conversion dip tank, and waste universal lamps.

23. Respondent began operations at the facility in or about 1989.

24. Respondent periodically discards the wastes described in Paragraph 22 by sending those wastes off-site for disposal.

25. The wastes identified in Paragraph 22 are solid wastes as that term is defined by WAC NR 661.02.

26. Respondent generates at the facility several hazardous wastes identified or listed in WAC NR Chapter 661. [40 C.F.R. Part 261].

27. The hazardous wastes which Respondent generates at the facility includes those wastes with D001, D007, F003 and F005 hazardous waste codes.

28. Respondent is a “generator,” as that term is defined in WAC NR 660.10(50) [40 C.F.R. § 260.10].

29. Respondent generated prior to the inspection, and continues to generate after the inspection, more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month, and was and is a large quantity generator as defined by WAC NR 660.10(70m).

30. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Wisconsin regulations as part of the applicable state hazardous waste management program for the state of Wisconsin, or both.

31. At all times relevant to this CAFO, the State of Wisconsin had not and has not issued a permit to Respondent to treat, store, or dispose of hazardous waste at the facility.

32. At all times relevant to this CAFO, Respondent did not have and has not had interim status for the treatment, storage, or disposal of hazardous waste at the facility.

33. Pursuant to Section 3005(a) or RCRA, 42 U.S.C. § 6925(a), and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited. See also WAC Chapter NR 670.

34. Pursuant to WAC NR 662.034(1)(d), and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with, among other things, all personal training requirements of WAC NR 665.0016 [40 C.F.R. § 265.16] and all contingency plan requirements of subchapter D of WAC Chapter NR 665. [40 C.F.R. Part 265 Subpart D].

35. WAC NR 665.0016(3) requires that facility personnel take part in annual reviews of training required under WAC NR 665.0016(1). [40 C.F.R. § 265.16(c)].

36. Prior to 2014, Respondent provided to facility personnel initial training as required by WAC NR 665.0016(1).

37. In 2014 and 2016, Respondent failed to provide to facility employees annual reviews of training required under WAC NR 665.0016(1).

38. Pursuant to WAC NR 665.0052(5), Respondent must have a contingency plan for its facility which includes a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external) and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities. [40 C.F.R. § 265.52(e)].

39. Pursuant to WAC NR 665.0052(6), the contingency plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe the signal or signals to be used to begin evacuation, evacuation routes and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires). [40 C.F.R. § 265.52(f)].

40. Prior to the inspection Respondent prepared a contingency plan for the facility.

41. At the time of the inspection, Respondent's contingency plan did not include all of the information required by WAC NR 665.0052(5) and (6). Specifically, Respondent's contingency plan lacked detail on evacuation routes and emergency equipment.

42. Pursuant to WAC NR 665.0054(3), Respondent must immediately amend the contingency plan whenever the facility changes—in its design, construction, operation, maintenance or other circumstances—in a way that materially increases the potential for fires, explosions or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency. [40 C.F.R. § 265.54(c)].

43. At the time of the inspection, Respondent maintained a hazardous waste storage area in a location different than what was presented in the facility's contingency plan.

44. At the time of the inspection, Respondent had not amended the contingency plan to reflect the new location of the hazardous waste storage area at the facility, as required by WAC NR 665.0054(3). [40 C.F.R. § 265.54(c)].

45. By failing to comply with personal training and contingency plan requirements as set forth above, Respondent failed to meet the conditions of WAC NR 662.034(1)(d) [40 C.F.R. § 262.34(a)(4)] necessary to exempt it from the requirement to obtain interim status or apply for and obtain a permit for the storage of hazardous waste;

46. Pursuant to WAC NR 664.0001(b), subject to certain exceptions, the regulations at WAC Chapter NR 664 apply to all facilities which treat, store or dispose of hazardous waste. [40 C.F.R. § 264.1(b)].

47. Pursuant to WAC NR 664.0001(7)(c), the regulations at WAC Chapter NR 664 do not apply to a generator which accumulates waste on-site in compliance with, among other provisions, WAC NR 662.034 [40 C.F.R. § 262.34].

48. Because Respondent failed to meet the requirements of WAC NR 662.034 [40 C.F.R. § 262.34], Respondent is subject to the requirements of WAC Chapter 664 [40 C.F.R. Part 264].

Count 1

(Personnel Training Requirements)

49. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

50. WAC NR 664.0016(3) provides that facility personnel shall take part in annual reviews of the initial training required by WAC NR. 664.0016(1). [40 C.F.R. § 264.16(a)].

51. Prior to 2014, Respondent provided to facility personnel initial training required by WAC NR. 664.0016(1). [40 C.F.R. § 264.16(a)].

52. In 2014 and 2016, Respondent failed to provide to facility personnel annual training reviews of initial training required by WAC NR. 664.0016(1), as required by WAC NR 664.0016(3). [40 C.F.R. § 264(c)].

53. By failing to provide to facility personnel annual reviews in 2014 and 2016 of training required by WAC NR 664.0016(1), Respondent violated WAC NR 664.0016(3). [40 C.F.R. § 264.16(c)].

Count 2

(Contingency Plan Requirements)

54. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

55. Pursuant to WAC NR 664.0052(5), a large quantity generator must have a contingency plan which includes a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external) and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities. [40 C.F.R. § 264.52(e)].

56. Pursuant to WAC NR 664.0052(6), the contingency plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe the signal or signals to be used to begin evacuation, evacuation routes and

alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires). [40 C.F.R. § 264.52(f)].

57. At the time of the inspection, Respondent's contingency plan did not include all of the information required by WAC NR 664.0052(5) and (6). Specifically, Respondent's contingency plan lacked detail on evacuation routes and emergency equipment.

58. Pursuant to WAC NR 664.0054(3), Respondent must immediately amend the contingency plan whenever the facility changes—in its design, construction, operation, maintenance or other circumstances—in a way that materially increases the potential for fires, explosions or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency. [40 C.F.R. § 264.54(c)].

59. At the time of the inspection, Respondent had not amended the contingency plan to reflect the new location of the hazardous waste storage area at the facility, as required by WAC NR 664.0054(3). [40 C.F.R. § 264.54(c)].

60. By failing to comply with contingency plan requirements as set forth above, Respondent violated WAC NR 664.0052(5) and (6) and 664.0054(3).

Count 3

(Hazardous Waste Determinations)

61. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

62. Pursuant to WAC NR 662.0011 [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in s. NR 661.02, shall determine if that waste is a hazardous waste using the following method:

- 1) The person may first determine if the waste is excluded from regulation under s. NR 661.04.

- 2) The person shall then determine if the waste is listed as a hazardous waste in subch. D of ch. NR 661 (lists of hazardous wastes).
- 3) For purposes of compliance with ch. NR 668, or if the waste is not listed in subch. D of ch. NR 661 (lists of hazardous wastes), the generator shall then determine whether the waste is identified in subch. C of ch. NR 661 (characteristics of hazardous waste) by any of the following:
 - a) Testing the waste according to the methods set forth in subch. C of ch. NR 661 (characteristics of hazardous waste), or according to an equivalent method approved by the department under s. NR 660.21.
 - i. Chemical and physical samples shall be analyzed by a laboratory certified or registered under ch. NR 149, except for field analyses for pH, specific conductance and temperature.
 - b) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

63. At the time of the inspection, Respondent had failed to make a hazardous waste determination in accordance with WAC NR 662.0011 for the D007 hazardous waste solution from its chromium conversion dip tank.

64. By failing to make a hazardous waste determination for the waste solution from the chromium conversion dip tank, Respondent violated WAC NR 662.0011.

Count 4

(Universal Waste Lamp Management)

65. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

66. Pursuant to WAC NR 673.13(4) [40 C.F.R. § 273.13(d)], a small quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage and compatible with the contents of the lamps. The containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

67. Pursuant to WAC NR 673.14(5) [40 C.F.R. § 273.14(e)], a small quantity handler of universal waste shall clearly label or mark each lamp, or a container or package in which the lamps are contained, with the phrase "Universal Waste — Lamps", "Waste Lamps" or "Used Lamps".

68. At the time of the inspection, Respondent was accumulating universal waste lamps in several boxes on top of the southern-most paint booth in its North Building. All of those boxes were open and it was unclear which lamps may have been used and which were new. The way in which the lamps were stored made them inaccessible and it was unclear if any of the containers were labeled as required.

69. By failing to keep containers of universal waste lamps closed and by failing to properly label the lamps or containers, Respondent violated WAC NR 673.13(4) and WAC NR 673.14(5).

Civil Penalty

70. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$17,991. In determining the penalty amount, Complainant took into account the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and Respondent's agreement to perform supplemental environmental projects. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

71. Within 30 days after the effective date of this CAFO, Respondent must pay a \$17,991 civil penalty for the RCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

- a. For checks sent by regular U.S. Postal Service mail,

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

- b. For checks sent by express mail,

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must state "*In the matter of: C. Nelson Enterprises, Inc.*" and the docket number of this CAFO.

72. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Brian Kennedy (LR-17J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Charles Mikalian (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

73. This civil penalty is not deductible for federal tax purposes.

74. If Respondent does not timely pay the civil penalty, above, or any stipulated penalties due under paragraph 90, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

75. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Projects

76. Respondent has proposed and must complete two supplemental environmental projects (SEPs) designed to protect the environment or public health by 1) installing and operating a ProMix 2KE paint proportioner system to limit the volume of hazardous waste paint and solvent generated on site (“Paint SEP”), and 2) installing and operating a system to reduce the water content of the hazardous waste chromium conversion solution generated on site (“Water Reduction SEP”).

77. Respondent must complete the Paint SEP as follows: 1) within 90 days of the effective date of this CAFO, purchase and install the ProMix 2KE paint proportioner system and all necessary ancillary equipment, and 2) operate the unit for at least three years following its complete installation date. Respondent must record the volume of hazardous waste paint and solvent generated by the unit for this three-year period.

78. Respondent must spend at least \$32,000 to complete the Paint SEP.
79. Respondent must complete the Water Reduction SEP as follows:
- a. Within 90 days of the effective date of this CAFO, purchase and install a unit suitable to reduce only the water content of Respondent's hazardous waste chromium conversion solution (the "Water Reduction Unit");
 - b. Purchase and install an interim holding tank suitable to store the hazardous waste chromium conversion solution prior to introduction to the Water Reduction Unit;
 - c. For at least three years following its date of complete installation, operate the interim holding tank and Water Reduction Unit to store, and reduce only the water content in, Respondent's hazardous waste chromium conversion solution generated on site: and
 - d. Record the volume of hazardous waste chromium conversion solution that is placed in the Water Reduction Unit, and the volume of solution that is shipped off-site for disposal, for at least the three-year operational period.

80. Respondent must submit copies of all reports and engineering assessments related to the Water Reduction SEP within 30 days of issuance or receipt to Mr. Brian Kennedy of the RCRA Branch at the address in paragraph 72, or electronically to kennedy.brian@epa.gov.

81. Respondent must spend at least \$110,000 to complete the Water Reduction SEP.

82. Respondent certifies that it is not required to perform or develop the SEPs by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action.

83. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

84. Respondent must submit an Initial Progress Report, Biannual Progress Reports, and a SEP Completion Report following the effective date of the CAFO. The Initial Progress Report is due within 60 days after the effective date of the CAFO and must contain the following information:

- a. For the Paint SEP:
 - i) The status of the installation the unit and associated equipment. If the unit has been installed, Respondent must submit photographs of the installed unit and associated equipment. If the unit has not been installed, Respondent must provide a schedule estimating the date of installation.
 - ii) An itemized list of expenditures to date for the unit, including installation and maintenance costs.
- b. For the Water Reduction SEP:
 - i) The status of the installation of all units and associated equipment. If the units have been installed, Respondent must submit photographs of the installed units and equipment and copies of all required reports and assessments. If the units and equipment have not been installed, Respondent must provide a schedule estimating the date of installation, including a date by which Respondent expects to obtain the required certified hazardous waste tank system assessments.
 - ii) An itemized list of expenditures to date for all units and equipment, including installation and maintenance costs.

85. Respondent must submit Biannual Progress Reports every six months following the effective date of the CAFO and until the three-year operational period of the Paint or Water Reduction SEP is completed, whichever occurs later. The Biannual Progress Reports shall contain the following information:

- a. For the Paint SEP:
 - i) The status of the unit and associated equipment, including a description of any operational issues and necessary maintenance since the previous report, as well as current photographs of the unit and associated equipment.
 - ii) An itemized list of expenditures for the unit since it became operational, including maintenance costs.
 - iii) The total quantity of hazardous waste paint and solvent waste generated by the unit since the previous report.
- b. For the Water Reduction SEP:
 - i) The status of all units and associated equipment, including a description of any operational issues and necessary maintenance since the previous report, as well as current photographs of all units and equipment.
 - ii) An itemized list of expenditures for the unit since it became operational, including maintenance costs.
 - iii) The total quantity of hazardous waste chromium conversion solution placed into the Water Reduction Unit since the previous report.
 - iv) The total quantity of concentrated (water-reduced) hazardous waste chromium conversion solution shipped off-site as hazardous waste since the previous report, and copies of associated hazardous waste manifests.

86. Following the three-year operational period of the Paint or Water Reduction SEP, whichever occurs later, Respondent must submit a SEP Completion Report. Respondent must submit the SEP Completion Report not later than the due date of the next Biannual Progress Report. The SEP Completion Report must contain the following information:

- a. For the Paint SEP:
 - i) The status of the unit and associated equipment, including a description of any operational issues and necessary maintenance since the previous report, as well as current photographs of the unit and associated equipment.
 - ii) An itemized list of expenditures for the total cost of the Paint SEP, including all capital, operational, and maintenance costs.

- iii) The total quantity of hazardous waste paint and solvent waste generated by the unit since its installation date.
- b. For the Water Reduction SEP:
 - i) The status of all units and associated equipment, including a description of any operational issues and necessary maintenance since the previous report, as well as current photographs of all units and equipment.
 - ii) An itemized list of expenditures for the total cost of the Water Reduction SEP, including all capital, operational, and maintenance costs.
 - iii) The total quantity of hazardous waste chromium conversion solution placed into the Water Reduction Unit since its installation date.
 - iv) The total quantity of concentrated (water-reduced) hazardous waste chromium conversion solution shipped off-site as hazardous waste since its installation date. Include also copies of any hazardous waste manifests generated since the previous report.
- c. A certification that Respondent has completed the SEPs in compliance with this CAFO, signed by a responsible corporate officer.
- d. A description of the environmental and public health benefits resulting from the SEPs that quantifies all pollution reduction and prevention.

87. Respondent must submit all notices, documents and reports required by this CAFO by first class or overnight mail to Mr. Brian Kennedy of the RCRA Branch at the address in paragraph 72, or electronically to kennedy.brian@epa.gov.

88. In each report that Respondent submits as provided by this CAFO, it must certify that the Report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

89. Following receipt of the SEP Completion Report described in paragraph 86, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEPs and the SEP reports;
- b. There are deficiencies in the SEPs as completed or in the SEP reports and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEPs or the SEP reports and U.S. EPA will seek stipulated penalties under paragraph 90.

If U.S. EPA exercises option b., above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 90.

90. If Respondent violates any requirement of this CAFO relating to the SEPs, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b., below, if Respondent did not complete the SEPs satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$60,116.
- b. If Respondent did not complete the SEPs satisfactorily, but U.S. EPA determines that Respondent (i) made good faith and timely efforts to complete the SEPs and (ii) certified, with supporting documents, that it spent at least 90 percent of the amounts set forth in paragraphs 78 and 81, Respondent will not be liable for a stipulated penalty under subparagraph a., above.
- c. If Respondent did not timely submit the SEP Completion Report, or did not timely submit any other report or document required in paragraphs 80 and 84 – 86, above, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty per violation per day

Period of violation

\$500	1 st through 14 th day
\$1,000	15 through 30 th day
\$1,500	31 st day and beyond

91. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEPs and whether Respondent made good faith and timely efforts to complete the SEPs will bind Respondent.

92. Respondent must pay any stipulated penalties within 30 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 71, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

93. Any public statement that Respondent makes referring to the SEPs must include the following language, "Quality Paint and Coatings undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Quality Paint and Coatings for violations of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the requirements of WAC NR 680.30, 680.31, and 680.32 [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)], WAC NR 665.0052 [40 C.F.R. §§ 265.52], WAC NR 665.0054 [40 C.F.R. § 265.54], WAC NR 665.0016 [40 C.F.R. §§ 265.16], WAC NR 662.0011 [40 C.F.R. § 262.11], and WAC NR 673.13 and 673.14 [40 C.F.R. §§ 273.13 and 273.14]."

94. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEPs under this CAFO.

95. For Federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEPs.

General Provisions

96. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mikalian.charles@epa.gov (for Complainant), and donald.gallo@huschblackwell.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

97. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

98. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

99. This CAFO does not affect Respondent’s responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

100. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31, U.S. EPA’s RCRA Civil Penalty Policy, and U.S. EPA’s Hazardous Waste Civil Enforcement Response Policy (December 2003).

101. The terms of this CAFO bind Respondent, its successors, and assigns.

102. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

103. Each party agrees to bear its own costs and attorney’s fees in this action.

104. This CAFO constitutes the entire agreement between the parties.

Quality Paint and Coatings, Respondent

2-27-18

Date



Charles H. Nelson, President
C. Nelson Enterprises, Inc., d/b/a
Quality Paint and Coatings

United States Environmental Protection Agency, Complainant

3/26/2018

Date



Michael D. Harris
Acting Division Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Quality Paint and Coatings
Docket No. RCRA-05-2018-0009

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

March 27, 2018

Date

Ann L. Coyle

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the Matter of: **Quality Paint and Coatings**
Docket Number: **RCRA-05-2018-0009**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **RCRA-05-2018-0009**, which was filed on March 28, 2018, this day in the following manner to the addressees:

Copy by e-mail to Respondent: Donald Gallo
donald.gallo@huschblackwell.com

Copy by e-mail to Attorney for Complainant: Charles Mikalian
mikalian.charles@epa.gov

Copy by e-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: March 28, 2018 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5