

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

** FILED **
11SEP2019 - 02:25PM
U.S.EPA - Region 09

In the matter of)	U.S. EPA Docket No.
)	RCRA- 9-2019- 0063
Dura Coat Products Inc.)	
)	CONSENT AGREEMENT AND
CA ID No. CAR000014092)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Dura Coat Products Inc. (Respondent or "Dura Coat").
2. Respondent owns and operates a facility located at 5361 Via Ricardo, Riverside, California (the "Facility"). The Facility maintains the California RCRA Identification Number CAR000014092. At the Facility, Respondent manufactures various paint products.
3. On July 31, 2018, inspectors from EPA conducted an unannounced RCRA Compliance Evaluation Inspection ("CEI") at the Facility. The purpose of the inspection was to determine the Facility's compliance with applicable federal environmental statutes and regulations, and in particular RCRA, the regulations in 40 C.F.R. Parts 261-265, 268, 273 and 279, and the regulations adopted by the California authorized program under RCRA in the California Code of Regulations, Title 22, Division 4.5 and the California Health and Safety Code, Division 20. Based upon the findings EPA made during the inspection, EPA determined that Respondent had violated provisions of RCRA and California Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.
4. This Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges

that Respondent failed to: (1) obtain an extension or permit to store hazardous waste more than ninety (90) days, a violation of 22 California Code of Regulations (“C.C.R.”) §§ 66262.34(c) and 66270.1(c) [see also 40 C.F.R. §§ 262.17 and 270.1(c)]; (2) label containers containing hazardous waste, a violation of 22 C.C.R. §§ 66262.34(a)(3) and 66262.34(f) [see also 40 C.F.R. §§ 262.34(2) and 262.34(3)]; (3) close containers of hazardous waste, a violation of 22 C.C.R. §§ 66262.34(a)(1)(A) and 66265.173(a) [see also 40 C.F.R. § 262.17(a)(1)(iv)(A) and 40 C.F.R. § 265.173(a)]; (4) determine whether solid waste generated at the Facility was hazardous, a violation of 22 C.C.R. § 66262.11 [see also 40 C.F.R. § 262.11]; (5) comply with the requirements for aisle space, in violation of 22 C.C.R. § 66265.35 [see also 40 C.F.R. § 262.255]; (6) conduct hazardous waste storage area inspections, in violation of 22 C.C.R. § 66265.174 [see also 40 C.F.R. § 266.174]; and (7) provide emergency equipment in violation of 22 C.C.R. §§ 265.32(a) and 265.23(d) [see also 40 C.F.R. § 265.32. These are all in violation of Section 3001 et seq. of RCRA, 42 U.S.C. § 6921 *et seq.*, and federal and state regulations adopted pursuant thereto.

B. JURISDICTION

5. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to § 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* California has been authorized for all the regulations referenced in this CA/FO.
6. Respondent is a “person” as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].
7. Respondent is the “operator” of a facility as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].
8. Respondent is a “generator” of hazardous waste as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].
9. Respondent is or has been engaged in “storage” of hazardous waste as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].
10. Respondent generates and accumulates, or has generated and accumulated, materials that are “wastes” as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [see also 40 C.F.R. §§ 260.10 and 261.2].
11. At the Facility, Respondent generates and accumulates, or has generated and accumulated, “hazardous waste” as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [see also RCRA § 1004(5), and 40 C.F.R.

§§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, paint sludge and paint related waste (D001), toluene/acetone (D001/D007/C-331), and universal waste fluorescent lamps.

12. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
13. A violation of California's authorized hazardous waste program, found at Health & Safety Code § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
15. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division.

C. ALLEGED VIOLATIONS

COUNT I

Storage of Hazardous Waste Without a Permit or Extension/ Storage of Hazardous Waste Over the Ninety Day Time Limit

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 22 C.C.R. § 66262.34(a) states that generators may accumulate hazardous waste on-site for 90-days or less without a permit or grant of interim status. 22 C.C.R. § 66262.34(c) states that if a generator stores hazardous waste on-site for more than 90 days, the generator must be granted a permit, or extension to do so.
18. At the time of the CEI, the EPA Inspectors observed labels confirming that Dura Coat had stored approximately twenty (20) 55-gallon containers over the 90-day storage time limit without a permit or extension of the time period.
19. Therefore, EPA alleges that Respondent violated the requirements of 22 C.C.R. § 66262.34(c) [*see also* 40 C.F.R. § 262.17].

COUNT II

Failure to Label Hazardous Waste Containers

20. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
21. 22 C.C.R. §§ 66262.34(a)(3) and 66262.34(f) require generators to properly label hazardous wastes stored on-site as well as include the following information; (1) composition and physical state of the wastes, (2) statement or statements which call attention to the particular hazardous properties of the waste (e.g., flammable, reactive, etc.), and (3) the name and address of the person producing the waste.
22. During the CEI the EPA Inspectors observed the facility failed to properly label approximately eighteen (18) containers holding RCRA Hazardous Waste. Some labels had faded or peeled off making it difficult to determine the composition and physical state of the wastes and the hazardous characteristics of the waste. Some labels also did not identify substances as hazardous waste.
23. Therefore, EPA alleges that Respondent failed to label hazardous waste containers in violation of 22 C.C.R. §§ 66262.34(a)(3) and 66262.34(f) [*see also* 40 C.F.R. 262.17].

COUNT III

Failure To Close Hazardous Waste Storage Containers

24. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
25. 22 C.C.R. §§ 66262.34(e)(1)(D) requires a generator to comply with 22 C.C.R. §66265.173(a). Section 66265.173(a) requires that containers holding hazardous waste shall always be closed during transfer and storage, except when it is necessary to add or remove waste.
26. During the CEI, EPA Inspectors observed several containers of hazardous waste in a hazardous waste accumulation area that were not properly closed and were not open to add or remove waste. Three containers contained RCRA D001 acetone and one container contained F001/F002 still bottoms.
27. Therefore, EPA alleges that Respondent has violated 22 C.C.R. §66262.34 (e)(1)(D), 22 C.C.R. §66265.173(a) [*see also* 40 C.F.R. § 262.17(a)(1)(iv)(A) and 40 C.F.R. §265.173]

COUNT IV

Failure to Make Hazardous Waste Determination

28. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.

29. 22 C.C.R. § 66262.11 requires a “person” who “generates” a “waste” to make an accurate determination as to whether the waste is a hazardous waste.
30. During the CEI, the EPA Inspectors observed trash and other waste material stored on-site for which Respondent failed to determine whether the material was hazardous.
31. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.11 [see also 40 C.F.R. § 262.11].

COUNT V

Failure to Provide Required Aisle Space

32. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
33. 22 C.C.R. § 66265.35 requires that a generator that accumulates hazardous waste on-site must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in the waste accumulation area in an emergency, unless aisle space is not needed for any of these purposes.
34. During the CEI, the EPA Inspectors observed that Respondent did not maintain adequate aisle space in a hazardous waste accumulation area that would allow unobstructed movement of response personnel in the event of an emergency.
35. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.35 [see also 40 C.F.R. § 262.255].

COUNT VI

Failure to Conduct Hazardous Waste Storage Area Inspections

36. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
37. 22 C.C.R. §§ 66265.174 provides that an owner or operator shall inspect areas used for container storage or transfer, at least weekly, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.
38. During the CEI, the EPA Inspectors observed that while inspection logs were kept up to date, Respondent’s inspections failed to identify approximately twenty (20) hazardous waste containers stored beyond the 90-day storage limit specified in 22 C.C.R. § 66262.34(a)(4).

39. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.174 [*see also* 40 C.F.R. § 266.174].

COUNT VII

Failure to Provide Emergency Equipment

40. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
41. 22 C.C.R. § 66265.32 provides that all facilities must be equipped with an internal communications or alarm system capable of providing immediate emergency instruction to facility personnel, and spill control and decontamination equipment.
42. During the CEI, the EPA Inspectors observed Respondent failed to provide certain emergency response equipment, including an alarm, decontamination eye wash, and a shower unit.
43. Therefore, EPA alleges that Respondent has violated 22 C.C.R. §§ 66262.34 [*see also* 40 C.F.R. § 265.32].

D. CIVIL PENALTY

44. Based upon the facts alleged herein and upon those factors that EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the 2003 RCRA Civil Penalty Policy (“Penalty Policy”), including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed THIRTY THOUSAND DOLLARS (\$30,000.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the Penalty Policy.

E. ADMISSIONS AND WAIVERS OF RIGHTS

45. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
46. Respondent neither admits nor denies specific factual allegations set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42

U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

47. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
48. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
49. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

50. Respondent consents to the assessment of and agrees to pay a civil penalty of THIRTY THOUSAND DOLLARS (\$30,000.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
51. Respondent shall submit payment of the THIRTY THOUSAND DOLLARS (\$30,000.00) within sixty (60) calendar days of the Effective Date of this CA/FO by electronic funds transfer ("wire") or on-line payment as set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, California or EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action.

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo1.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

52. At the time payment is made, a copy of the payment transmittal shall be sent to:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Daniel Fernandez (ENF 2-2)
Enforcement Division
Waste and Chemical Section
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

53. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue on any unpaid balance from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

54. In the event Respondent fails to meet its obligations set forth in Paragraph 51 of this CA/FO, Respondent shall pay stipulated penalties as set forth below:
For failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay, SEVEN HUNDRED FIFTY DOLLARS (\$750) per day for sixteenth to thirtieth day of delay, and ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250) per day for each day of delay thereafter.

55. All penalties and interest owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due.
56. All penalties and interest shall be remitted as described in Paragraph 51.
57. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

I. CERTIFICATION OF COMPLIANCE

58. By signing this consent agreement, Respondent certifies under penalty of law to EPA that the Respondent has fully complied with RCRA Hazardous Waste Management requirements, 42 U.S.C. §§ 6921–6939e, and the federally authorized California hazardous waste management program including 22 C.C.R. § 66262.32 [*see also* 40 C.F.R. § 262], and 22 C.C.R. § 66265.173(a) [*see also* 40 C.F.R. § 265.173(a)], that formed the basis for the violations alleged in this CA/FO. This certification of compliance is based on true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

J. RESERVATION OF RIGHTS

59. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondents failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA (except as to those civil penalties for the violations and facts alleged herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”); or any other statutory, regulatory or common law enforcement authority of the United States.
60. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state or federal laws and regulations.
61. The entry of this CA/FO and Respondent’s consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that

such actions are warranted except as they relate to Respondents liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.

62. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state or federal permits.

K. OTHER CLAIMS

63. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondents of any other claim, 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 the Facility.

L. MISCELLANEOUS

64. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
65. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
66. The Effective Date of this CA/FO is the date the Final Order is filed by the Regional Hearing Clerk following signature by the Regional Judicial Officer.

IT IS SO AGREED.

7-16-19

Date

B. Avison

Brian Avison
Plant Manager
Dura Coat Products Inc.

8/29/19

Date

Amy C. Miller

Amy C. Miller
Director
Enforcement and Compliance Assurance Division

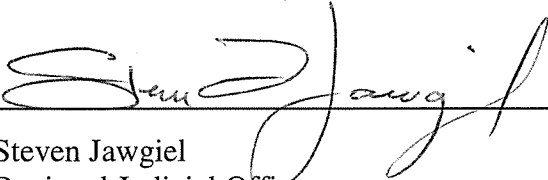
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9 -2019- 0063) be entered and that Dura Coat Products Inc. pay a civil penalty of thirty thousand dollars (\$30,000.00) due within sixty (60) days from the Effective Date of this Consent Agreement and Final Order. The \$30,000 penalty includes \$23.54 in interest as required under 40 C.F.R. § 13.11. Payment must be made pursuant to Section G of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

09/11/19

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I hereby certify that the original of the Consent Agreement and Final Order in the matter of Dura Coat Products Inc. (RCRA-09-2019-0063), has been filed by the Regional Hearing Clerk, and a true and correct copy was served as indicated below:

Certified Mail

Respondent:

Brian Avison
Plant Manager
Dura Coat Products Inc.
5361 Via Ricardo
Riverside, CA 92509

Complainant:

Hand Delivery

Myles Saron
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Dated: Sept 11, 2019

Steven Armsey

Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX