

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

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| IN THE MATTER OF: |) | |
| |) | |
| |) | |
| Dartex Coatings, Inc. |) | |
| 22 Steel Street |) | |
| North Smithfield, RI 02896 |) | Docket No. CAA-01-2020-0042 |
| |) | |
| Respondent |) | |
| |) | |
| Proceeding under Section |) | |
| 113 of the Clean Air Act |) | |
| |) | |

CONSENT AGREEMENT AND FINAL ORDER

1. The United States Environmental Protection Agency, Region 1 (“EPA” or “Complainant”) alleges that Dartex Coatings, Inc. (“Dartex” or “Respondent”) violated a federally-enforceable Minor Source Permit, Approval Nos. 1356 and 1580, issued pursuant to Rhode Island’s State Implementation Plan (“SIP”), Air Pollution Control Regulation No. 9, Air Pollution Control Permits.

2. EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

3. Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of Complainant and Respondent, it is hereby ordered and adjudged as follows:

A. PRELIMINARY STATEMENT

4. The provisions of this CAFO shall apply to and be binding upon EPA and upon Respondent, its officers, directors, successors, and assigns.

5. The effective date of this CAFO shall be the date it is filed with the Regional Hearing Clerk, in accordance with 40 C.F.R. § 22.31(b).

6. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual and legal allegations contained in this CAFO, consents to its terms.

7. Respondent hereby waives its right to contest any issue of law or fact set forth in this CAFO, as well as its right to appeal the Final Order.

8. By signing this CAFO, Respondent certifies that it has ceased operations at its 22 Steel Street, North Smithfield facility (“Dartex facility”).

Statutory and Regulatory Authority

9. Section 110(a) of the Clean Air Act (“CAA”), 42 U.S.C. § 7410(a), requires each state to incorporate regulations that attain and maintain healthy air quality in the state’s SIP. A state must submit its SIP and any SIP revisions to EPA for approval. Once EPA has approved a SIP, it may enforce the SIP’s requirements and prohibitions under Sections 113(a) and (b) of the CAA, 42 U.S.C. §§ 7413(a) and (b).

10. EPA has approved the State of Rhode Island’s SIP under Section 110 of the CAA, 42 U.S.C. § 7410. The Rhode Island SIP includes various federally-approved portions of the Air Pollution Control Regulations promulgated by the Rhode Island Department of Environmental Management (“RIDEM”), including Air Pollution Control Regulation 9, Air Pollution Control

Permits. The Rhode Island SIP is accessible at <https://www.epa.gov/sips-ri/epa-approved-regulations-rhode-island-sip>.

11. EPA alleges that Respondent's violations described herein render Respondent liable for penalties under Section 113(d) of the CAA. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes EPA to issue an administrative penalty order.

12. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. Part 19, promulgated in accordance with the *Debt Collection Improvement Act of 1996* ("DCIA"), 31 U.S.C. §§ 3701 *et seq.*, provide for the assessment of civil penalties up to \$48,192 per day as adjusted by the DCIA.

13. Section 113(d) of the CAA limits EPA's authority to issue administrative penalty orders to matters where the total penalty sought does not exceed \$200,000 and the first date of violation occurred no more than twelve months prior to the initiation of the action, unless EPA and the U.S. Department of Justice ("DOJ") jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for an administrative penalty action. Although this action alleges violations that commenced more than twelve months ago, EPA and DOJ have jointly determined that this matter is appropriate for an administrative penalty action.

B. EPA FINDINGS

14. The Dartex facility coats and laminates paper and plastic film onto fabrics used in the healthcare, outerwear clothing and other industries. As part of its operations, the facility's Lamination Line emits volatile organic compounds (VOCs).

15. On December 18, 2000, RIDEM issued Minor Source Permit Approval Nos. 1356 and 1580 ("Minor Source Permit") to Enterprise Coatings ("Enterprise"), approving the installation of an Anguil Environmental Systems thermal oxidizer (the "thermal oxidizer") at the

Enterprise (now Dartex) facility. The thermal oxidizer is designed to control VOCs emitted from the Lamination Line during the coating and lamination process.

16. On September 7, 2001, Respondent sent RIDEM a letter asking that RIDEM's records reflect a transfer of ownership of the Minor Source Permit. Respondent had purchased Enterprise's assets, including Enterprise's facility at 22 Steel Street, North Smithfield, Rhode Island. On October 22, 2001, RIDEM wrote Respondent a response letter acknowledging the change in ownership and subsequent name change from Enterprise Coatings Company, Ltd to Dartex Coatings, Inc.

17. Under the SIP at RI APC Regulation 9.6.8, any person issued a SIP permit by RIDEM must comply with each of the permit's conditions. Under the SIP at RI APC Regulation 9.6.9, failure to comply with any of the permit's conditions is considered a failure to comply with the SIP.

18. Conditions A.1 and A.2 in the Minor Source Permit require the Dartex facility to capture 100 percent of the VOCs emitted from the Laminating Line and destroy 99 percent of the VOCs generated.

19. Condition E.4 in the Minor Source permit requires the Dartex facility to notify RIDEM of any anticipated noncompliance with its Minor Source Permit.

20. EPA inspectors visited the facility on September 28, 2017, August 2, 2018, September 12, 2018, and November 7, 2019.

21. An EPA inspector took measurements using a flame ionization detector that demonstrated Respondent is operating a capture system for the Laminating Line that does not capture 100 percent of the VOCs emitted from the Laminating Line.

22. On March 25, 2019, EPA issued a Notice of Violation ("NOV") to Respondent in

which EPA found that Respondent violated CAA requirements relating to Conditions A.1, A.2, and E.4 in Minor Source Permit, Approval Nos. 1356 and 1580.

23. At the time EPA issued an NOV to Respondent citing violations to Conditions A.1., A.2., and E.4, EPA alleges Respondent had not notified RIDEM of its anticipated noncompliance, as required by Condition E.4.

24. On or about May 15, 2020, Respondent ceased operations at the 22 Steel Street, North Smithfield facility.

25. EPA alleges that Dartex violated Conditions A.1 and A.2 of the Minor Source Permit on each day of operations from the time it began operating the facility in 2001 until or about May 15, 2020. EPA alleges that Dartex violated Condition E.4 of the Minor Source Permit for at least or about two months during the time it began operating the facility in 2001 until or about May 15, 2020.

C. TERMS OF SETTLEMENT

26. Without admitting or denying the specific factual and legal allegations contained in this CAFO, Respondent consents to the terms and issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty set forth herein.

27. Civil Penalty: Taking into account the particular facts and circumstances of this matter, with specific reference to the penalty factors set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the amount of three hundred sixteen thousand dollars (\$316,000).

28. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the civil penalty set forth in Paragraph 27 by submitting a bank, cashier's, or certified check,

payable to the order of the "Treasurer, United States of America." The check should be sent via regular mail to:

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

or, Respondent may make payment via express mail to:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Respondent shall note the case name and docket number of this matter ("*In the matter of Dartex Coatings, Inc.*, Docket No. CAA-01-2020-0042") on the check and in an accompanying cover letter, and shall simultaneously provide copies of the check and cover letter to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100 (ORA18-1)
Boston, MA 02109-3912

and

Aleksandra George Ruiz
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100 (ORC04-6)
Boston, MA 02109-3912

29. If Respondent fails to make the payment by the required due date, the total penalty amount plus all accrued interest, shall become due immediately to the United States upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due

has been received by the United States. Respondent shall be liable for such amount regardless of whether EPA has notified Respondent of its failure to pay or made a demand for payment. All payments to the United States under this paragraph shall be made by bank, cashier's, or certified check as described in Paragraph 28.

30. 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.

31. In the event that any portion of the civil penalty amount described in Paragraph 25 is not paid when due without demand, pursuant to Section 113(d)(5) of the CAA, Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid when due. In that event, interest will accrue from the due date at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorney's fees and collection costs as provided in 42 U.S.C. § 7413(d). In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

D. GENERAL PROVISIONS

32. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on or a

determination of any issue related to any federal, state, or local permit.

33. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

34. Payment of the civil penalty, and any interest, non-payment penalties, and/or other charges set forth in this CAFO does not waive, suspend, or modify the responsibility of Respondent to comply with the requirements of all federal laws and regulations administered by EPA and shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

35. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113 of the CAA for the violations alleged in Section B of this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to respond to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.

36. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of

Respondent's violation of this CAFO or of the statutes and regulations upon which it is based, or for Respondent's violation of any applicable provision of law.

37. Except as described in Paragraph 31, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

38. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

39. The Parties agree that Respondent and EPA may execute this CAFO by electronic signature. To ensure the validity of these signatures and legal enforceability of this CAFO, EPA electronic signatures will comply with the Agency's 2018 Electronic Signature Policy and Electronic Signature Procedure. Respondent's signature will also comply with all applicable Rhode Island e-signature policies and laws, including the EPA regulations at 40 C.F.R. Part 3, which defines a "valid electronic signature" to mean "an electronic signature on an electronic document that has been created with an electronic signature device that the identified signatory is uniquely entitled to use for signing that document, where this device has not been compromised, and where the signatory is an individual who is authorized to sign the document by virtue of his or her legal status and/or his or her relationship to the entity on whose behalf the signature is executed." 40 C.F.R. § 3.3. At a minimum, all electronically signed documents must be reproducible in a human-intelligible form and clearly indicate: (1) that the document was electronically signed; (2) the unique identity of the individual who signed the document and their intent to sign; and (3) the date and time it was signed. Once the CAFO is signed by a Party, the

document must be locked to prevent any further alteration of the document. Respondent may deliver electronically signed documents by email to the EPA at george.aleksandra@epa.gov.

40. After EPA's receipt of the electronically signed CAFO, EPA may electronically sign the CAFO and file and serve copies of the executed CAFO in accordance with the EPA Region 1 Regional Judicial Officer's Standard Operating Procedures dated March 24, 2020. An electronically signed CAFO delivered by email or in hard copy shall be deemed an original document, which shall be stored and managed in accordance with Rhode Island and Federal recordkeeping requirements. EPA and Respondent acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. Therefore, the Parties shall not deny the legal effect, validity, or enforceability of records containing electronic signatures that they transmit and receive on the ground that such records, including the signature(s), are in electronic form.

FOR DARTEX COATINGS, INC.



Mark Jones, President
Dartex Coatings, Inc.

05/11/2020

Date

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

Date

Aleksandra George Ruiz, Enforcement Counsel
Office of Regional Counsel
U.S. EPA, Region 1

Date

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner specified. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

Date