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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

FILED

2008 SEP 26 PM 1:30

U.S. EPA REGION IX

In the Matter of:

Kop-Coat, Inc.

Respondent

Docket No. EPCRA-09-2008-0020

CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18

I. CONSENT AGREEMENT

1. The Director of the Communities and Ecosystems Division ("Complainant"), United States Environmental Protection Agency ("EPA") EPA Region 9, and Kop-Coat, Inc. ("Respondent" or "Kop-Coat"), the Parties herein, agree to settle this matter and consent to the entry of this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
2. This is a civil administrative proceeding initiated pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq., also known as the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), for violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated to implement Section 313 at 40 C.F.R. Part 372.
3. Complainant has been duly delegated the authority to file this action and sign a consent agreement settling this action. Respondent is an Ohio corporation headquartered at 436 Seventh Avenue, Pittsburgh, Pennsylvania 15219.

- 1 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023
2 and 11048, EPA promulgated the Toxic Chemical Release
3 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part
4 372.
- 5 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.
6 § 372.30, provides that an owner or operator of a facility
7 that meets the criteria set forth in EPCRA Section 313(b) and
8 40 C.F.R. § 372.22, is required to submit annually to the
9 Administrator of EPA and to the State in which the facility
10 is located, no later than July 1st of each year, a toxic
11 chemical release inventory reporting form (hereinafter "Form
12 R") for each toxic chemical listed under 40 C.F.R. § 372.65
13 that was manufactured, processed or otherwise used at the
14 facility during the preceding calendar year in quantities
15 exceeding the thresholds established under EPCRA Section
16 313(f) and 40 C.F.R. §§ 372.25, 372.27 and 372.28.
- 17 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that
18 the requirements of Section 313(a) and 40 C.F.R. § 372.30
19 apply to an owner and operator of a facility that has 10 or
20 more full-time employees; that is in a Standard Industrial
21 Classification (SIC) (as in effect on January 1, 1987) major
22 group or industry code listed in § 372.23(a), for which the
23 corresponding North American Industry Classification System
24 (NAICS) (as in effect on January 1, 2007, for reporting year
25 2008 and thereafter) subsector and industry codes are listed
26 in 40 C.F.R. §§ 372.23(b) and (c); and that manufactures,

1 processes, or otherwise uses one or more toxic chemicals
2 listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65
3 in quantities in excess of the applicable thresholds
4 established under EPCRA Section 313(f) and 40 C.F.R. §§
5 372.25, 372.27 and 372.28.

6 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.
7 Part 19 authorize EPA to assess a penalty of up to \$27,500
8 for each violation of Section 313 of EPCRA that occurred on
9 or after January 30, 1997, but before March 15, 2004, and up
10 to \$32,500 for each violation of Section 313 of EPCRA that
11 occurred on or after March 15, 2004.

12 8. Respondent is a "person," as that term is defined by Section
13 329(7) of EPCRA.

14 9. At all times relevant to this CAFO, Respondent was the owner
15 and operator of a facility located at 5431 District Blvd, Los
16 Angeles, California 90040 (the "Facility"), which falls
17 within the definition of a "facility" found in Section 329(4)
18 of EPCRA and 40 C.F.R. § 372.3.

19 10. The Facility employed 10 or more "full-time employees," as
20 that term is defined at 40 C.F.R. § 372.3 and was classified
21 in NAICS Code 325510 - Paint and Coating Manufacturing.

22 11. During calendar year 2006, Respondent processed approximately
23 276,400 pounds of copper compounds, a chemical category
24 listed under 40 C.F.R § 372.65, at the Facility.

25 12. The quantity of copper compounds Respondent processed at the
26 Facility during calendar year 2006 exceeds the established
27

1 threshold of 25,000 pounds set forth at 40 C.F.R. §
2 372.25(a).

3 13. Respondent failed to submit a Form R for copper compounds
4 processed at the Facility to the EPA Administrator and to the
5 State of California on or before July 1, 2007, for calendar
6 year 2006.

7 14. Respondent's failure to submit a Form R before July 1 of 2007
8 for copper compounds processed at the Facility during the
9 preceding calendar year constitutes a violation of Section
10 313 of EPCRA and 40 C.F.R. § 372.30.

11 15. During calendar year 2006, Respondent processed approximately
12 619 pounds of lead compounds, a chemical category listed
13 under 40 C.F.R § 372.65, at the Facility.

14 16. The quantity of lead compounds Respondent processed at the
15 Facility during calendar year 2006 exceeds the established
16 threshold of 100 pounds set forth at 40 C.F.R. § 372.28.

17 17. Respondent failed to submit a Form R for lead compounds
18 processed at the Facility to the EPA Administrator and to the
19 State of California on or before July 1, 2007, for calendar
20 year 2006.

21 18. Respondent's failure to submit a Form R before July 1 of 2007
22 for lead compounds processed at the Facility during the
23 preceding calendar year constitutes a violation of Section
24 313 of EPCRA and 40 C.F.R. § 372.30.

25 19. During calendar year 2006, Respondent processed approximately
26 56,728 pounds of xylene, a chemical listed under 40 C.F.R
27

1 § 372.65, at the Facility.

2 20. The quantity of xylene Respondent processed at the Facility
3 during calendar year 2006 exceeds the established threshold
4 of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).

5 21. Respondent failed to submit a Form R for xylene processed at
6 the Facility to the EPA Administrator and to the State of
7 California on or before July 1, 2007, for calendar year 2006.

8 22. Respondent's failure to submit a Form R before July 1 of 2007
9 for xylene processed at the Facility during the preceding
10 calendar year constitutes a violation of Section 313 of EPCRA
11 and 40 C.F.R. § 372.30.

12 23. The EPA Enforcement Response Policy for EPCRA Section 313
13 dated August 10, 1992, as amended by 40 C.F.R. Part 19,
14 provides for a penalty of thirteen thousand, three hundred
15 dollars (\$13,300) for these violations.

16 24. In executing this CAFO, Respondent certifies that (1) it has
17 now fully completed and submitted to EPA all required Form
18 Rs, in compliance with Section 313 of EPCRA and the
19 regulations promulgated to implement Section 313; and (2) it
20 has complied with all other EPCRA requirements at all
21 facilities under its control.

22 25. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
23 purpose of this proceeding, Respondent (i) admits that EPA
24 has jurisdiction over the subject matter of this CAFO and
25 over Respondent; (ii) admits the violations and facts alleged
26 in this CAFO; (iii) consents to the terms of this CAFO; (iv)

1 waives any right to contest the allegations in this CAFO; and
2 (v) waives the right to appeal the proposed final order
3 contained in this CAFO.

4 26. The terms of this CAFO constitute a full settlement of the
5 civil administrative matter filed under the docket number
6 above.

7 27. EPA's final policy statement on Incentives for Self-Policing:
8 Discovery, Disclosure, Correction and Prevention of
9 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit
10 Policy") has several important goals, including encouraging
11 greater compliance with the laws and regulations which
12 protect human health and the environment and reducing
13 transaction costs associated with violations of the laws EPA
14 is charged with administering. If certain specified criteria
15 are met, reductions in gravity-based penalties of up to 100%
16 are available under the Audit Policy. These criteria are (1)
17 discovery of the violation(s) through an environmental audit
18 or a compliance management system; (2) voluntary disclosure;
19 (3) prompt disclosure; (4) discovery and disclosure
20 independent of government or third party plaintiff; (5)
21 correction and remediation; (6) prevention of recurrence; (7)
22 no repeat violations; (8) exclusion of the policy's
23 applicability to certain types of violations, including those
24 resulting in serious actual harm to the environment and those
25 that may have presented an imminent and substantial
26 endangerment to the public health or the environment; and (9)

1 cooperation.

2 28. Complainant has determined that Respondent has satisfied all
3 of the criteria under the Audit Policy and thus qualifies for
4 the elimination of civil penalties in this matter.
5 Accordingly, the civil penalty assessed in this matter is
6 zero (\$0) dollars.

7 29. Complainant's finding that Respondent has satisfied the
8 criteria of the Audit Policy is based upon documentation that
9 Respondent has provided to establish that it satisfies these
10 criteria. Complainant and Respondent agree that, should any
11 material fact upon which Complainant relied in making its
12 finding subsequently prove to be other than as represented by
13 Respondent, this CAFO may be voided in whole or in part.

14 30. Nothing in this CAFO modifies, affects, exempts or relieves
15 Respondent's duty to comply with all applicable provisions of
16 EPCRA and other federal, state or local laws and permits. In
17 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves
18 Respondent's liability for federal civil penalties for the
19 violations and facts specifically alleged in this CAFO.
20 Nothing in this CAFO is intended to or shall be construed to
21 resolve (i) any civil liability for violations of any
22 provision of any federal, state, or local law, statute,
23 regulation, rule, ordinance, or permit not specifically
24 alleged in this CAFO; or (ii) any criminal liability. EPA
25 specifically reserves any and all authorities, rights, and
26 remedies available to it (including, but not limited to,

1 injunctive or other equitable relief or criminal sanctions)
2 to address any violation of this CAFO or any violation not
3 specifically alleged in this CAFO.


4 31. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),
5 this CAFO shall be effective on the date that the final order
6 contained in this CAFO, having been approved and issued by
7 either the Regional Judicial Officer or Regional
8 Administrator, is filed.

9 32. The provisions of this CAFO shall be binding upon Respondent,
10 its agents, successors or assigns. Respondent's obligations
11 under this Consent Agreement, if any, shall end when
12 Respondent has performed all of the terms of the Consent
13 Agreement in accordance with the Final Order. Complainant
14 and Respondent consent to the entry of the CAFO without
15 further notice.

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17 FOR RESPONDENT:

18
19 9/16/08

20 Date

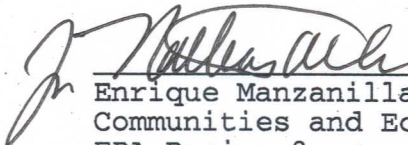


Subhash Shah
General Manager
Kop-Coat Marine West

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22 FOR COMPLAINANT:

23
24 9/25/2008

25 Date



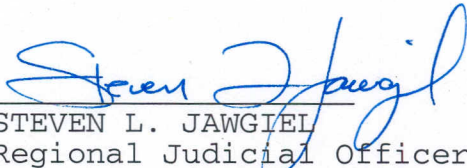
Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

1 **II. FINAL ORDER**

2 Complainant EPA Region IX and Respondent Kop-Coat, Inc.,
3 having entered into the foregoing Consent Agreement,

4 IT IS HEREBY ORDERED that this Consent Agreement and Final
5 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-
6 09-2008-00 2) 0 be entered.

7
8 09/26/08
9 Date


10 STEVEN L. JAWGIEL
11 Regional Judicial Officer
12 U.S. Environmental Protection
13 Agency, Region 9
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