

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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In the Matter of :  
 :  
Paint Over Rust Products, Inc., :  
 :  
Respondent. :  
 :  
 :  
Proceeding under Section 325(c) :  
of Title III of the Superfund :  
Amendments and Reauthorization Act :  
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**CONSENT AGREEMENT/FINAL ORDER**  
Docket No. EPCRA-02-2019-4201

**PRELIMINARY STATEMENT**

This civil administrative proceeding for the assessment of a civil penalty was 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”)). Pursuant to Section 22.13(b) of Title 40 of the Code of Federal Regulations (“C.F.R.”) of the Consolidated Rules of Practice, where the parties agree to settlement of causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3). This administrative proceeding constitutes one that is being simultaneously commenced and concluded pursuant to said provisions.

Complainant and Respondent agree that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been judicially or administratively adjudicated.

#### **EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Paint Over Rust Products, Inc. (formerly Absolute Coatings, Inc.), a corporation organized pursuant to the laws of the State of New York.
2. Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 372.3.
3. Respondent is an owner and/or operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3, located at 38 Portman Road, New Rochelle, NY 10801 (hereinafter the "Facility").
4. The Facility:
  - a. is classified by NAICS Code 325510 (Paint and Coating Manufacturing);
  - b. has employed at all times relevant more than 10 employees; and
  - c. processes diisocyanates and, at all times relevant, has processed diisocyanates in amounts over the applicable reporting threshold of 25,000 pounds.
5. As a consequence of its activities at the Facility, Respondent is, and was during all times relevant, subject to the requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereto and set forth at 40 C.F.R. Part 372.
6. For each of reporting years 2015, 2016, and 2017, the Facility was required to, but failed to, submit Form A or Form R reports for diisocyanates. The Facility later submitted Form R reports for diisocyanates, for each of those reporting years, on May 30, 2019.

7. Respondent failed, in a timely manner, to submit to the Administrator and to the State of New York, a complete and correct Form R or Form A for each of the above-described toxic chemicals.

8. Respondent's failure to timely submit Toxic Chemical Release Inventory Forms for its facility constituted violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense, or uncertainty of a formal adjudicatory hearing on the merits, knowingly and voluntarily: (a) admits the jurisdictional allegations in EPA's Findings of Fact; (b) neither admits nor denies specific factual allegations contained in EPA's Findings of Fact; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall hereinafter maintain compliance with all applicable provisions and statutory requirements of EPCRA and the implementing regulations.

