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REGIONAL HEARING CLERK
EPA REGION 6

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

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The Sherwin-Williams Company

Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2024-0936

RESPONDENT

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and Respondent, The Sherwin-Williams Company ("Respondent" or "Sherwin-Williams") and concerns the facilities located at 701 S Shiloh Road in Garland, TX 75042 ("Shiloh Road Facility") and 2802 W. Miller Road in Garland, TX 75041 ("Miller Road Facility").
2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2)¹.

¹ On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated December 2015, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20190 (April 10, 2020); 40 C.F.R. 272.2201: Texas State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Texas' published version. The corresponding C.F.R. citations are also provided.

3. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.
4. Respondent waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO and waives all defenses which have been raised or could have been raised to the claim in the CAFO.
5. The CAFO resolves only those violations which are alleged or could have been alleged based on the facts stated, herein.
6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

II. JURISDICTION

7. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this CAFO under 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2) and (3).
8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of EPA to issue or enforce this CAFO and agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a corporation authorized to do business in the State of Texas.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 Texas Admin. Code § 3.2(25), [40 C.F.R. § 260.10].
11. Respondent owns and operates the Shiloh Road Facility and Miller Road Facility.
12. The Shiloh Road Facility and Miller Road Facility are paint manufacturers.
13. The Shiloh Road Facility and Miller Road Facility are each a "facility" within the meaning of 30 Texas Admin. Code § 335.1(60) [40 C.F.R. § 260.10].
14. From April 11, 2022, to January 26, 2023, EPA conducted a RCRA record review of the Shiloh Road Facility and Miller Road Facility's activities as generators of hazardous waste.
15. EPA discovered that Respondent generated hazardous wastes as defined in 30 Texas Admin. Code § 335.1 (70), [40 C.F.R. §§ 261.3].
16. Based on its review, EPA determined that Respondent generated the hazardous waste streams in quantities that exceeded the threshold amount of 1,000 kilograms of non-acute hazardous waste in a month, corresponding to Large Quantity Generator status under 30 Texas Admin. Code, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.
17. Respondent is a "generator" of "hazardous waste" as those terms are defined in 30 Texas Admin. Code §§ 335.1(66) & (70) [40 C.F.R. §§ 260.10 and 261.3].
18. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in 30 Texas Admin. Code Chapter 335, Subchapter C, [40 C.F.R Part 262].

19. The EPA submitted to the Shiloh Road Facility on November 14, 2022, and to the Miller Road Facility on January 26, 2023, a Notice of Potential Violation and Opportunity to Confer ("Notice"). The EPA conferred with Respondent on May 04, 2023, regarding the violations herein and to provide the Respondent an opportunity to submit additional information or materials. In response to EPA's request, Respondent submitted additional information and materials on or about May 17, 2023.

IV. VIOLATIONS

Claim 1. Notification Requirements

20. The allegations in Paragraphs 1-19 are re-alleged and incorporated herein by reference.

21. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with EPA or the authorized state a notification stating the location and general description of such activity and the identified characteristic or listed hazardous waste handled by such person. No identified characteristic or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). In addition, facilities managing hazardous secondary materials under the exclusion in 40 C.F.R. § 261.4(a)(23) must file with EPA or the authorized state prior notice of the activity.

22. Respondent did not file with the EPA or the State of Texas, an authorized state, an adequate and timely notification of its hazardous waste activities at the Shiloh Road Facility, including notification of hazardous secondary materials reclamation under the control of the generator in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a) 40 C.F.R. § 260.42 and 30 Texas Admin. Code §§ 335.6(c) and 335.24.

Claim 2. Failure to make Adequate Hazardous Waste Determinations

23. The allegations in Paragraphs 1-19 are realleged and incorporated by reference.

24. Pursuant to 30 Texas Admin. Code §§ 335.62 and 335.504, [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in 30 Texas Admin. Code § 335.1, [40 C.F.R. § 261.2] must determine if the solid waste is a hazardous waste either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

25. EPA reviewed Respondent's records for the period from and determined that Respondent failed to make adequate hazardous waste determinations on all of Respondent's solid waste streams at the Shiloh Facility.

26. Respondent violated the requirements of RCRA, and the regulations promulgated at 30 Texas Admin. Code §§ 335.62, 335.503, and 335.504 [40 C.F.R. § 262.11], by failing to make the requisite hazardous waste determination on all solid waste streams generated by Respondent at the Shiloh Road Facility at all times relevant to this CAFO.

Claim 3. Failure to Have an Adequate Contingency Plan

27. Pursuant to 30 Texas Admin. Code § 335.69(a)(4)(A) [40 C.F.R. § 262.17(a)(6)], a large quantity generator of hazardous waste must prepare an emergency plan with the required elements of 40 C.F.R. Part 262 Subpart M.

28. Respondent failed to comply with one or more of the requirements for contingency plan elements as applicable to 30 Texas Admin. Code § 335.69(a)(4)(A) [40 C.F.R. § 262.17(a)(6)] at the Shiloh Facility.

Claim 4. Failure to Manage Containers

29. Pursuant to 30 Texas Admin. Code §§ 335.65 – 335.68 [40 C.F.R. §262.17(a)(5)(ii)], a large quantity generator accumulating hazardous waste in tanks must mark or label its tanks with the words “Hazardous Waste”; (B) mark or label its tanks with an indication of the hazards contents; hazard communication consistent with the Department of Transportation requirements at 49 CFR 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704.
30. During the inspection at the Shiloh Road Facility, EPA identified six container storage areas with unlabeled, mislabeled, and/or open containers of hazardous waste.
31. During the inspection at the Miller Road Facility, EPA identified three container storage areas with unlabeled, mislabeled, and/or open containers of hazardous waste.
32. Respondent failed to comply with one or more of the requirements for hazardous waste container management, as applicable to 30 Texas Admin. Code §§ 335.65 – 335.68 [40 C.F.R. §262.17(a)(5)(ii)].

Claim 5. Failure to Comply with RCRA Air Emissions Standards

33. The allegations in Paragraphs 1-19 are realleged and incorporated herein by reference.
34. Pursuant to 30 Texas Admin. Code §§ 335.69(a)(1)(A) and (B) [40 C.F.R Part 265 Subparts BB and CC], certain air emissions standards apply to persons that generate hazardous waste.
35. During the inspection at the Shiloh Road Facility, EPA identified an open-ended line from a storage tank in hazardous waste service, observed a broken sight glass, and observed no manway hatch on a tank in hazardous waste service.

36. During the inspection at the Miller Road Facility, EPA identified a 16,000 ppm leak from a tank in closure status.

37. Respondent failed to comply with one or more of the requirements for piping and tanks in hazardous waste service, as applicable to 30 Texas Admin. Code § 335.69(a)(1)(B) [40 C.F.R. Part 265 Subparts BB and CC].

Claim 6. Failure to Keep Required Records

38. The allegations in Paragraphs 1-19 are realleged and incorporated herein by reference.

39. Pursuant to of 30 Texas Admin. Code § 335.70 [40 C.F.R. § 262.17(a)(7)(iv)], a generator must keep records of any test results, waste analyses, or other determinations made in accordance with 30 Texas Admin. Code §§ 335.62 and 335.504 [40 C.F.R. § 262.11], for at least three years from the date the waste was last sent to an on-site or off-site facility for treatment, storage, or disposal.

40. At all times relevant to this CAFO, the Shiloh Road Facility did not create and keep the requisite employee training records in violation of 30 Texas Admin. Code § 335.70 [40 C.F.R. § 262.17(a)(7)(iv)].

Claim 7. Failure to Operate Facility in accordance with the General Duty Clause

41. Respondent failed to maintain and operate the Shiloh Road Facility in a manner prescribed by 40 C.F.R. § 262.251 in violation of 30 Texas Admin. Code § 335.69(a)(4)(A).

42. On August 7, 2023, a fire originated from the Shiloh Road Facility.

V. COMPLIANCE ORDER

43. Pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within ninety (90) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has assessed all its solid waste streams at the Shiloh Road Facility to determine the accurate waste codes and has developed and implemented standard operating procedures ("SOPs") to ensure that Respondent is operating the Shiloh Road Facility in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; and (e) meeting the requirements of the land disposal requirements.
- B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Shiloh Road Facility and within the prescribed time period.
- C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.
- D. Respondent shall certify the cost of implementation of injunctive relief.
- E. Respondent shall certify the environmental benefit (reduction of waste or reduction in the toxicity of waste).

44. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Respondent and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. EPA, Region 6
Enforcement and Compliance Assurance Division (ECDSR)
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
ATTN: Erin Young-Dahl

Where required, notice shall be sent electronically by email or telephone to Enforcement Officer Erin Young-Dahl, respectively at youngdahl.erin@epa.gov or at 214-665-3166.

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

45. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of \$270,000.
46. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.

47. The EPA web address, <https://www.epa.gov/financial/additional-instructions-making-payments-epa>, provides a list of options available for transmitting payment of penalties.

Options for payment include:

- A. Electronic payments via Pay.gov. <https://www.pay.gov/public/form/start/11751879>
- B. Remittance by Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service

Express Mail. The check should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

- C. Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

- D. Wire Transfer:
Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (**In the Matter of The Sherwin-Williams Company, Docket No. RCRA-06-2024-0936**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

48. The Respondent shall send a simultaneous notice of such payment to the following:

Sherwin-Williams Company
RCRA-06-2024-0936

Lorena S. Vaughn
Regional Hearing Clerk (ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

U.S. EPA, Region 6
Enforcement and Compliance Assurance Division (ECD-SR)
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
ATTN: Erin Young-Dahl
Young-Dahl.Erin@epa.gov

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA.

49. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

50. Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on

the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

51. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the Compliance Order and payment of the civil penalty are restitution, remediation, or required to come into compliance with the law.
52. Respondent understands that their failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).
53. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution

or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN; Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at chalifoux.jessica@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- c. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. Notify EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the effective date of this Order; and

- ii. Provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

B. Costs

54. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

55. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section V (Compliance Order). Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

D. Effective Date of Settlement

56. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

Sherwin-Williams Company
RCRA-06-2024-0936

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 08/13/2024



Signature

Stephen J. Perisutti
The Sherwin-Williams Company
Representative Name

Vice President, Deputy General Counsel
& Assistant Secretary
Title

FOR THE COMPLAINANT:

Date: August 14, 2024



Digitally signed by
CHERYL SEAGER
Date: 2024.08.14
14:42:39 -05'00'

Cheryl T. Seager,
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged, or which could have been alleged based on the facts stated, herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

**THOMAS
RUCKI**

Digitally signed by
THOMAS RUCKI
Date: 2024.08.19
12:44:06 -04'00'

Thomas Rucki
Regional Judicial Officer

Sherwin-Williams Company
RCRA-06-2024-0936

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to Complainant, EPA:

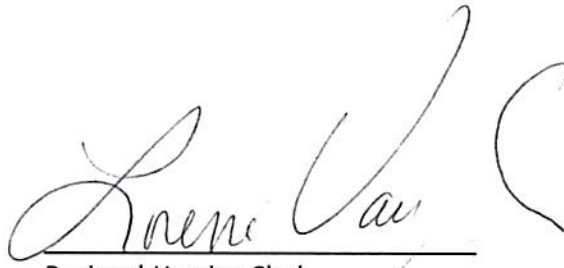
henley.hollis@epa.gov

Copy via Email to Respondent:

flores@guidaslavichflores.com
jason.perdion@sherwin.com
kurtis.rhudy@sherwin.com

701 S Shiloh Road
Garland, TX 75042

2802 Miller Road
Garland, TX 75041



Regional Hearing Clerk
EPA Region 6