UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the matter of:	)	U.S. EPA Docket No.
	)	
	)	RCRA-09-2025-0091
Engineered Polymer Solutions	)	
CAD002277093	)	CONSENT AGREEMENT AND
	)	FINAL ORDER PURSUANT TO
Respondent.	)	40 C.F.R. SECTIONS 22.13 AND
	)	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, as codified at 40 Code of Federal Regulations ("C.F.R.") Part 22 ("Consolidated Rules").

2. The Administrator of the United States Environmental Protection Agency ("EPA") has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter, "Complainant."

3. Respondent is The Sherwin-Williams Company dba Engineered Polymer Solutions ("Respondent").

4. This Consent Agreement and Final Order ("CA/FO"), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a)(1)-(3) and (8), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

5. Complainant and Respondent agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their respective interests and in the public interest.

B. PARTIES BOUND

6. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

C. STATUTORY AND REGULATORY FRAMEWORK

7. Subtitle C of RCRA requires the EPA Administrator to promulgate regulations establishing a hazardous waste management program. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste management programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of a law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

8. The State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, on or about August 1, 1992. This authorization was updated on September 26, 2001 (*see* 66 FR 49118, September 26, 2001), on October 7, 2011 (*see* 76 FR 62303, October 7, 2011), and again on January 14, 2020 (*see* 85 FR 2038, as corrected [*see* 86 FR 29207, June 1, 2021]). The authorized hazardous waste 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*. The State is authorized for all the hazardous waste management regulations referenced in this CA/FO.[1]

9. A violation of the State 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.

[1] EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations as they existed at the time of their most recent federal authorization. As a convenience, corresponding Federal citations are provided in brackets.

10. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty and/or 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*.

D. GENERAL ALLEGATIONS

11. Respondent is a producer of resins, which are the base materials for paints, and owns and operates a manufacturing facility, located at 5501 E. Slauson Ave. in Commerce, California, with an EPA ID number of CAD002277093 (the "Facility").

12. On May 4 and May 5, 2021, EPA conducted a compliance evaluation inspection ("CEI") of the Facility pursuant to Subtitle C of RCRA.

13. Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent violated California Health & Safety Code § 25100 *et seq*. and the regulations adopted pursuant thereto, as approved and authorized by the United States.

14. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [see also 40 C.F.R. § 260.10].

15. Respondent is the "owner" and/or "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].

16. Respondent is a "generator" of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].

17. Respondent is or has been engaged in "treatment," "storage," and/or "disposal" of "hazardous waste" as defined in 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* 40 C.F.R. §§ 260.10 and 261.3].

18. 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 or have included the following hazardous waste codes: D001, D002, F003 and F005.

19. During the CEI, EPA determined that Respondent was managing hazardous waste in Tank T-20 ("T-20"). T-20 collected wastewater from a scrubber box, T-16 ("T-16"), stormwater runoff, laboratory waste, and compressor waste. EPA determined that at the time of the CEI, toluene and acetone were common reagents used in the laboratory. Following the CEI, Respondent disconnected the laboratory waste stream from T-20.

20. Based on information gathered as part of the CEI, EPA determined that T-20 waste met the criteria for the waste codes for RCRA ignitable hazardous waste (D001) and for the waste codes for spent non-halogenated solvents xylene and toluene, respectively, (F003 and F005).

21. During the CEI, EPA alleged that Respondent was managing hazardous waste from Tank T-856 ("T-856"). T-856 is a process separator tank that collects butanol from the Facility's K-3 Alkyd Reactor. A butanol and water mixture ("Butanol Solution") settles out of the excess butanol in T-856 and is removed from the bottom of T-856. The Butanol Solution is either: (a) routed from T-856 to steel totes and used in the cleaning cycles of the K-3 Alkyd Reactor until it is transferred directly from the K-3 Alkyd Reactor to a poly tote prior to disposal or (b) routed directly from T-856 to poly totes prior to disposal. Each poly tote into which the Butanol Solution is routed, either directly from T-856 or from the K-3 Alkyd Reactor, as described above, is referred to herein as a "Poly Tote".

22. Based on information gathered as part of the CEI, EPA determined that T-856 waste met the criteria for the waste code for spent non-halogenated solvent n-butyl alcohol (F003), in addition to the criteria for the waste code for RCRA ignitable hazardous waste (D001).

23. 22 C.C.R. § 66270.1 [*see also* 40 C.F.R.§ 270.1] requires that, with certain exceptions not relevant here, owners and operators must have interim status or obtain a permit for treatment, storage, or disposal of hazardous waste.

24. At the time of the CEI, EPA determined that Respondent managed hazardous waste but did not have interim status or a permit to do so.

E. ALLEGED VIOLATIONS

Count I

Failure to make an accurate waste determination

25. Paragraphs 1 through 24 above are incorporated herein by reference.

26. 22 C.C.R. § 66262.11 [see also 40 C.F.R. § 262.11][2] requires a person who generates a waste, as defined by 22 C.C.R. § 66261.2, to determine if that waste is a hazardous waste. Pursuant to 22 C.C.R. §§ 66262.11(a)-(b) [*see also* 40 C.F.R. § 262.11][3], to make such a determination, the generator shall first determine if the waste is excluded from regulation under 22 C.C.R. § 66261.4 or Section 25143.2 of the California Health and Safety Code, and shall then determine if the waste is listed as a hazardous waste in Title 22, Division 4.5, Chapter 11, Article 4 of the California Code of Regulations, 22 C.C.R. §§ 66261.30-66261.35 [40 C.F.R. §§ 261.30-35].

27. Based on a review of Respondent's waste manifests, EPA determined that on at least 36 instances from 2018 through 2021, Respondent shipped waste from T-20 as non-RCRA hazardous waste, without the waste codes D001, F003 and F005.

28. Based on a review of Respondent's waste manifests, EPA determined that on at least seven instances between 2018 and 2020, Respondent shipped Butanol Solution as RCRA ignitable hazardous waste (D001), without the waste code F003.

29. Therefore, by failing to determine if the waste is listed as a hazardous waste in Title 22, Division 4.5, Chapter 11, Article 4 of the California Code of Regulations, 22 C.C.R. §§ 66261.30-35 [*see also* 261.30-35], Respondent failed to make an accurate hazardous waste determination, a violation of 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

Count II

Failure to comply with air emission standards for equipment leaks

30. Paragraphs 1 through 24 above are incorporated herein by reference.

31. 22 C.C.R. § 66262.34(a)(1)(A)[4] [*see also* 40 C.F.R. §§ 262.17(a)(1)(i) and 262.17(a)(2)] exempts generators of hazardous waste from the permit requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1] and allows generators to accumulate hazardous waste on-site for up to 90 days provided that they meet certain conditions, including that the waste is accumulated in containers or tanks and the generator complies with the air emissions standards for equipment leaks found at Title 22, Division 4.5, Chapter 15, Article 28 (Air Emission Standards for Equipment Leaks) ("Article 28") of the California Code of Regulations, 22 C.C.R. §§ 66265.1050-1064 [*see also* 40 C.F.R. §§ 265.1050-1064], if applicable.

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[2] The current version of 40 C.F.R. § 262.11 clarifies EPA's longstanding policy that generators must make an accurate waste determination.

[3] The State of California amended this regulation subsequent to its most recent federal authorization. Subsequent amendments by the State to the federally authorized version of the State regulation do not affect the applicable portion of the requirement and, therefore, have no effect on this enforcement action.

[4] This California regulation has been updated and renumbered subsequent to its most recent federal authorization and can now be found at 22 C.C.R. §§ 66262.17(a)(1)(A) and 66262.17(a)(2). *See* footnote 1.

32. 22 C.C.R. § 66265.1063(d) [*see also* 40 C.F.R. § 265.1063(d)] states that an owner or operator of a facility shall determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentrations that equals or exceeds 10 percent by weight.

33. Respondent asserted that the equipment connected to T-20 contained or contacted hazardous waste with organic concentrations of less than 10 percent by weight because the main source of organics of T-20 waste was from T-16 waste, which had organic concentrations of less than 10 percent by weight.

34. During the CEI, EPA measured one percent by weight of organics at the overflow vent pipe for T-20.

35. Based on EPA's measurement and information provided during the CEI, EPA determined that Respondent failed to properly measure percent by weight of organics of all the waste streams entering T-20 and, therefore, Respondent failed to determine whether equipment connected to T-20 contains or contacts a hazardous waste with organic concentrations that equals or exceeds 10 percent by weight.

36. 22 C.C.R. § 66265.1064(k)(3) [*see also* 40 C.F.R. § 265.1064(k)(3)] requires an owner or operator to maintain in the facility operating record an up-to-date-analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements of 22 C.C.R §§ 66265.1052-1060, including, if knowledge of the nature of the hazardous waste or the process by which it was produced is used, documentation of a waste determination by knowledge, in accordance with 22 C.C.R. § 66265.1063(d)(3) [*see also* 40 C.F.R. § 265.1063(d)(3)].

37. EPA determined that Respondent was not implementing the recordkeeping requirements at the time of the CEI. Respondent produced analytical data for only one of the waste streams entering T-20, which data had been obtained after the date of the CEI and, therefore, was not an up-to-date analysis at the time of the CEI.

38. Therefore, by failing to determine whether each piece of equipment connected to T-20 contains or contacts a hazardous waste with organic concentrations that equals or exceeds ten percent by weight, in violation of 22 C.C.R. § 66265.1063(d) [*see also* 40 C.F.R § 265.1063(d)], and by failing to implement recordkeeping requirements for regulated equipment, in violation of 22 C.C.R. § 66265.1064(k)(3) [*see also* 40 C.F.R. § 265.1064(k)(3)], Respondent failed to implement Article 28 [*see also* 40 C.F.R. §§ 265.1050-1064].

39. EPA alleges that by failing to satisfy the requirements of Article 28 [*see also* 40 C.F.R. §§ 40 C.F.R. §§ 265.1050-1064], Respondent failed to meet the conditional requirement for permit exemption and was therefore operating a hazardous waste management facility without a permit in violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

Count III

Failure to comply with air emissions standards for tanks

40. Paragraphs 1 through 24 above are incorporated herein by reference.

41. 22 C.C.R. § 66262.34(a)(1)(A)[5] [*see also* 40 C.F.R. §§ 262.17(a)(1)(i) and 262.17(a)(2)] exempts generators of hazardous waste from the permit requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1] and allows generators to accumulate hazardous waste on-site for up to 90 days provided that they meet certain conditions, including that the waste is accumulated in containers or tanks and the generator complies with the air emissions standards for equipment leaks found at Title 22, Division 4.5, Chapter 15, Article 28.5 (Air Emission Standards for Tanks, Surface Impoundments, and Containers) ("Article 28.5") of the California Code of Regulations, 22 C.C.R. §§ 66265.1080-1090 [*see also* 40 C.F.R. §§ 265.1080-1090], if applicable.

42. 22 C.C.R. § 66265.1083(c)(1) [*see also* 40 C.F.R. § 265.1083(c)(1)] provides that a tank is exempt from the standards in 22 C.C.R. §§ 66265.1085-1088 [*see also* 40 C.F.R. §§ 265.1085-1088] as applicable, provided that all hazardous waste entering the unit had an average volatile organic ("VO") concentration at the point of waste origination of less than 500 parts per million by weight ("ppmw"), as determined in accordance with the procedures in 22 C.C.R. § 66265.1084(a) [*see also* 40 C.F.R. § 265.1084(a)].

43. 22 C.C.R. § 66265.1084(a)(1) [*see also* 40 C.F.R. § 265.1084(a)(1)] states that an owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under 22 C.C.R. § 66265.1083(c)(1) [*see also* 40 C.F.R. § 265.1083(c)(1)].

44. Respondent asserted that the hazardous waste entering T-20 had an average VO concentration of less than 500 ppmw because there was data from January 2017 indicating that the VO concentration for the T-20 waste stream was 167.43 ppm, less than 500 ppmw, and that the only input into T-20 expected to contribute to VO concentrations was T-16 and there was data from May 2021 indicating that the VO concentration for the T-16 waste stream was less than 500 ppmw.

[5] This California regulation has been updated and renumbered subsequent to its most recent federal authorization and can now be found at 22 C.C.R. §§ 66262.17(a)(1)(A) and 66262.17(a)(2). *See* footnote 1.

45. Based on information submitted as part of the CEI, EPA determined that Respondent's January 2017 and May 2021 data was insufficient to establish the exemption from Article 28.5 requirements because the measurement in January 2017 was taken after dilution in T-20, and not at the point of origination, and the sampling method used in May 2021 did not meet the requirements of 22 C.C.R. § 66265.1084(3)(B) [*see also* 40 C.F.R. § 265.1084(3)(B)], respectively.

46. During the CEI, EPA measured VO concentrations of 10,000 ppm at the overflow vent pipe for T-20, which exceeded the 500 ppmw limit for the exemption from Article 28.5 requirements.

47. Based on EPA's measurement and information provided during the CEI, EPA determined that Respondent failed to make a proper determination of average VO concentration at the point of origination for hazardous wastes entering T-20 and, therefore, Respondent failed to establish that T-20 was exempt from the requirements of Article 28.5.

48. 22 C.C.R. § 66265.1085(b)(1) [*see also* 40 C.F.R. § 265.1085(b)(1)] states that an owner or operator shall control air pollutant emissions from a tank not exempt from the Article 28.5 requirements by implementing Tank Level 1 ("Level 1") controls or Tank Level 2 controls, as applicable.

49. Based on measurements of maximum organic vapor pressure obtained during the CEI, EPA determined that Tank Level 1 controls applied to T-20.

50. 22 C.C.R. § 66265.1085(c) [*see also* 40 C.F.R. § 265.1085(c)] requires an owner or operator controlling air pollutant emissions from a tank using Tank Level 1 controls to, *inter alia*, determine the maximum organic vapor pressure for hazardous waste to be managed in the tank using the procedure specified in 22 C.C.R. § 66265.1084(c) [*see also* 40 C.F.R. § 265.1084(c)], 22 C.C.R. § 66265.1085(c)(1) [*see also* 40 C.F.R. § 265.1085(c)(1)], and equip each tank with a fixed roof that meets certain specifications including that each opening in the fixed roof is either equipped with a closure device or connected by a closed-vent system that is vented to a control device, 22 C.C.R. § 66265.1085(c)(2)(C) [40 C.F.R. § 265.1085(c)(2)(iii)].

51. Based on information gathered during the CEI, EPA determined that Respondent failed to determine the maximum organic vapor pressure for each hazardous waste placed in T-20 in accordance with 22 C.C.R. § 66265.1084(c) [*see also* 40 C.F.R. § 265.1084(c)].

52. During the CEI, EPA observed an open vent pipe on the roof of T-20 without a closure device or connection to a closed-vent system that was vented to a control device.

53. Therefore, by failing to determine maximum organic vapor pressure for each hazardous waste placed in T-20, in violation of 22 C.C.R. § 66265.1085(c) [*see also* 40 C.F.R. § 265.1085(c)], and by failing to install a closure device or connection on the open vent pipe on the roof of T-20, in violation of 22 C.C.R. § 66265.1085(c)(2)(C) [40 C.F.R. § 265.1085(c)(2)(iii)], Respondent failed to implement Tank Level 1 controls and failed to implement Article 28.5 [*see also* 40 C.F.R. §§ 265.1080-1090].

54. EPA alleges that by failing to satisfy the requirements of Article 28.5 [*see also* 40 C.F.R. §§ 265.1080-1090], Respondent failed to meet the conditional requirement for permit exemption and was therefore operating a hazardous waste management facility without a permit in violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

Count IV

Failure to comply with hazardous waste tank secondary containment requirements

55. Paragraphs 1 through 24 above are incorporated herein by reference.

56. 22 C.C.R. § 66262.34(a)(1)(A)[6] [*see also* 40 C.F.R. § 262.17(a)(2)] exempts generators of hazardous waste from the permit requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1] and allows generators to accumulate hazardous waste on-site for up to 90 days provided that they meet certain conditions, including that the waste is accumulated in tanks and the generator complies with the tank system requirements found at Title 22, Division 4.5, Chapter 15, Article 10 (Tank Systems) ("Article 10") of the California Code of Regulations, 22 C.C.R. §§ 66265.190-202 [*see also* 40 C.F.R. §§ 265.190-202], if applicable.

57. 22 C.C.R. § 66265.193(a)-(c) [*see also* 40 C.F.R. § 265.193(a)-(c)] states that in order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment shall be provided for all tank systems which meets numerous requirements, including, *inter alia*, the secondary containment system shall have: a leak detection system and a sloped design or other drainage design to drain and remove liquids resulting from leaks, spills, or precipitation. 22 C.C.R. § 66265.193(d)-(e) [*see also* 40 C.F.R. § 265.193(d)-(e)] provides that an external liner system for a tank must have adequate storage volume and be free of cracks or gaps.

58. Based on information received as part of the CEI, EPA determined that T-20's secondary containment system lacked a leak detection system and sloped design or other drainage design. Further, the external liner system of T-20 did not have adequate secondary containment volume and there were cracks in the liner.

[6] This California regulation has been updated and renumbered subsequent to its most recent federal authorization and can now be found at 22 C.C.R. § 66262.17(a)(2). *See* footnote 1.

59. Therefore, by failing to have a leak detection system or sloped design or other drainage design of T-20, in violation of 22 C.C.R. § 66265.193(a)-(c) [*see also* 40 C.F.R. § 265.193(a)-(c)], and by having inadequate secondary containment volume and cracks in the external liner of T-20, in violation of 22 C.C.R. § 66265.193(d)-(e) [40 C.F.R. § 265.193(d)-(e)], Respondent failed to implement hazardous waste tank secondary containment and failed to implement Article 10 [*see also* 40 C.F.R. §§ 265.190-202].

60. EPA alleges that by failing to satisfy the requirements of Article 10 [*see also* 40 C.F.R. §§ 265.190-202], Respondent failed to meet the conditional requirement for permit exemption and was therefore operating a hazardous waste management facility without a permit in violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

Count V

Failure to perform daily tank inspections

61. Paragraphs 1 through 24 above are incorporated herein by reference.

62. 22 C.C.R. § 66262.34(a)(1)(A)[7] [*see also* 40 C.F.R. § 262.17(a)(2)] exempts generators of hazardous waste from the permit requirements of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1] and allows generators to accumulate hazardous waste on-site for up to 90 days provided that they meet certain conditions, including that the waste is accumulated in tanks and the generator complies with the tank system requirements found at Article 10 of the California Code of Regulations, 22 C.C.R. §§ 66265.190-202 [*see also* 40 C.F.R. §§ 265.190-202], if applicable.

63. 22 C.C.R. § 66265.195 [*see also* 40 C.F.R. § 265.195] states that the owner or operator of tank systems managing hazardous waste shall conduct daily tank inspections and requires that these inspections be documented in the operating record of the facility.

64. Based on information received as part of the CEI, EPA determined that Respondent failed to perform daily inspections of T-20 for at least 25 days in 2020 through 2021.

65. Therefore, by failing to conduct and/or document daily inspections of T-20, in violation of 22 C.C.R. § 66265.195 [*see also* 40 C.F.R. § 265.195], Respondent failed to implement Article 10 [*see also* 40 C.F.R. §§ 265.190-202].

66. EPA alleges that by failing to satisfy the requirements of Article 10 [*see also* 40 C.F.R. §§ 265.190-202], Respondent failed to meet the conditional requirement for permit exemption and was therefore operating a hazardous waste management facility without a permit in violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

[7] This California regulation has been updated and renumbered subsequent to its most recent federal authorization and can now be found at 22 C.C.R. § 66262.17(a)(2). *See* footnote 1.

Count VI

Failure to determine if waste must be treated to meet applicable standards before it can be land disposed

67. Paragraphs 1 through 24 above are incorporated herein by reference.

68. 22 CCR § 66268.7(a)(1) [40 C.F.R. § 268.7(a)(1)] requires a generator of hazardous waste to determine if waste must be treated to meet applicable treatment standards before it can be land disposed or, in the alternative, permits the generator to send the waste directly to a hazardous waste treatment facility.

69. 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 268.2(c)] defines "land disposal" as placement in or on the land, except in a corrective action management unit, and includes, but is not limited to, placement in a landfill.

70. Based on a review of Respondent's waste manifests, Respondent shipped T-20 waste as non-RCRA hazardous waste to one or more non-hazardous solid waste landfills ("Subtitle D Landfills") in at least 36 shipments from 2018 through 2021.

71. Disposal at Subtitle D Landfills constitutes land disposal and is not disposal at a hazardous waste treatment facility.

72. Therefore, by failing to determine whether the T-20 waste was listed hazardous waste prior to disposal in Subtitle D Landfills, Respondent failed to determine if the waste needed to be treated before it could be land disposed, in violation of 22 C.C.R. § 66268.7(a)(1) [*see also* 40 C.F.R. § 268.7(a)(1)].

73. EPA alleges that by failing to determine if waste needed to be treated before it could be land disposed, or in the alternative, to dispose of the waste at a hazardous waste treatment facility, Respondent violated the land disposal requirements of 22 C.C.R. § 66268.7(a)(1) [*see also* 40 C.F.R. § 268.7(a)(1)].

F. CIVIL PENALTY

74. Respondent agrees to pay a civil penalty in the amount of Three Hundred Six Thousand Four Hundred Thirty-Six DOLLARS ($306,436) ("Assessed Penalty") within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO as defined in Section M, below, is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

75. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: https://www.epa.gov/financial/makepayment. For additional instructions see: https://www.epa.gov/financial/additional-instructions-making-payments-epa.

76. When making a payment, Respondent shall:

    a. Identify every payment with Respondent's name and the docket number of this Agreement, RCRA-09-2025-0091.

    b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons via electronic mail:

    Regional Hearing Clerk
    U.S. Environmental Protection Agency, Region 9
    R9HearingClerk@epa.gov

    Christopher Rollins
    Enforcement and Compliance Assurance Division
    U.S. Environmental Protection Agency, Region 9
    Rollins.Christopher@epa.gov

    and

    U.S. Environmental Protection Agency
    Cincinnati Finance Center
    CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

77. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

a. Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the Internal Revenue Service ("IRS") large corporate underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Effective Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Effective Date.

78. Late Penalty Actions. In addition to the amounts described in the prior paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the IRS for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

79. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

80. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

G. ADMISSIONS AND WAIVERS OF RIGHTS

81. In accordance with 40 CFR § 22.18(b), for the purpose of this proceeding, Respondent:

    a. admits the jurisdictional allegations of this CA/FO;

    b. neither admits nor denies specific factual allegations contained in this CA/FO;

    c. consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, and to any conditions specified in this CA/FO; and

    d. waives any right to contest the allegations and its right to appeal the proposed final order accompanying this consent agreement.

82. In executing this CA/FO, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the CA/FO.

H. COMPLIANCE TASKS AND CERTIFICATION OF COMPLIANCE

83. In executing this CA/FO, Respondent certifies under penalty of law to EPA that other than the work to be performed pursuant to this Section, it has taken all steps necessary to return to full compliance with RCRA, 42 U.S.C. § 6901 *et seq.*, and its implementing regulations.

84. All submittals to EPA shall be sent electronically to EPA's enforcement officer at Rollins.Christopher@epa.gov.

85. If Respondent is unable to complete any of the compliance tasks in this Section, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit this request within seven (7) days of identifying a need for a modification. Based on this request, EPA shall in its discretion grant or deny, in full or in part, the request for modification.

86. Within 90 days of the Effective Date, Respondent shall either:

a. certify to EPA that Respondent is assuming Tank T-20 is a RCRA hazardous waste tank; or

b. perform an accurate hazardous waste determination at the points of generation in accordance with 22 CCR § 66262.11 [*see also* 40 C.F.R. § 262.11] for Tank T-20.

87. Within 90 days of the Effective Date, Respondent shall either:

a. perform waste determinations to determine whether the following equipment contains or contacts RCRA hazardous wastes with organic concentrations of at least 10% by weight in accordance with 22 C.C.R. § 66265.1050 [*see also* 40 C.F.R. 265.1050]:

i. any equipment that contacts Tank T-20; provided that, if a proper hazardous waste determination for Tank T-20 is conducted and it is determined that the tank is not a RCRA hazardous waste tank, Respondent does not need to perform such a determination with respect to any equipment that contacts Tank T-20;

ii. any equipment that connects T-856 to each Poly Tote; and

iii. any equipment that connects the K-3 Alkyd Reactor to each Poly Tote; or

b. certify to EPA that Respondent is assuming applicability of Article 28 [*see also* 40 C.F.R. §§ 265.1050-1064] for such equipment and document that Respondent is operating an Article 28 program for such equipment, including, without limitation, complying with the requirements for equipment tagging, air monitoring, and developing an air monitoring plan (*e.g.,* by submitting a plan for implementing an Article 28 program to EPA); provided that, if a proper hazardous waste determination for Tank T-20 is conducted and it is determined that the tank is not a RCRA hazardous waste tank, Respondent does not need to make such a certification with respect to any equipment that contacts Tank T-20.

88. Within 90 days of the Effective Date, Respondent shall either:

a. perform waste determinations to determine whether the average VO concentration at the point of origination of each hazardous waste placed in each Poly Tote is equal to or greater than 500 ppm by weight in accordance with 22 CCR § 66265.1084 [*see also* 40 C.F.R. § 265.1084]; or

b. certify to EPA that Respondent is assuming applicability of Article 28.5 [*see also* 40 C.F.R. §§ 265.1080-1090] for each Poly Tote and document that Respondent is operating an Article 28.5 program for each Poly Tote, including, without limitation, complying with the requirements for closure devices (*e.g.*, by submitting a plan for implementing an Article 28.5 program to EPA).

89. Within 90 days of the Effective Date, Respondent shall complete repair of the cracks in the secondary containment of Tank T-20 and submit completion documentation, including photos, to EPA.

90. Within fifteen (15) days of completion of the Compliance Task described in Paragraphs 86 through 89 above, Respondents shall submit the following certification:

> "By signing this Certification, Engineered Polymer Solutions without admitting or denying any allegation of fact or law, certifies that Engineered Polymer Solutions is in full compliance with all of the statutory and regulatory requirements that formed the basis for the violations alleged in this CA/FO. This certification of compliance is based upon 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."

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

91. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS ($500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS ($1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS ($5,000) per day for each day of delay thereafter. For the purposes of this Section, Respondent's obligation to meet any and all requirements set for this in this CA/FO shall include completion of any and all activities required under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

92. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

93. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. All stipulated penalties owed to EPA shall be due within thirty (30) days of receipt by Respondent of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due.

94. In addition to any stipulated penalties assessed, interest and penalties shall accrue in accordance with 40 C.F.R. § 13.11.

95. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section F of this CA/FO.

96. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal taxation purposes.

97. 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.

J. RESERVATION OF RIGHTS

98. In accordance with 40 C.F.R. § 22.18(c), full compliance with this CA/FO shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

99. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations. This CA/FO shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

K. OTHER CLAIMS

100. Nothing in this CA/FO shall constitute or be construed as a release from 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

101. This CA/FO can be signed in counterparts.

102. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

103. Each party to this action shall bear its own costs and attorneys' fees.

104. EPA and Respondent consent to entry of this CA/FO without further notice.

105. By signing this CA/FO, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.

106. 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 obligations under Section H (Compliance Tasks and Certification of Compliance) is restitution, remediation, or required to come into compliance with the law.

107. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the 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. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable:

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;

c. Respondent shall email its completed Form W-9 to Jessica Chalifoux in EPA's Cincinnati Finance Department at chalifoux.jessica@epa.gov, on or before the date the Respondent's penalty payment is due, pursuant to Paragraph 74, or within 7 days should the order become effective between December 15 and December 31 of the calendar year. EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

M. EFFECTIVE DATE

108. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CA/FO ("Effective Date") shall be the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

FOR RESPONDENT ENGINEERED POLYMER SOLUTIONS:

09/08/2025
Date

Stephen J. Perisutti
Senior Vice President and Deputy General Counsel
The Sherwin-Williams Company

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9:

AMY MILLER-BOWEN Digitally signed by AMY MILLER-BOWEN
Date: 2025.09.17 11:22:25 -07'00'

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9

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-2025-0091) be entered, that Respondent pay a civil penalty of THREE HUNDRED SIX THOUSAND FOUR HUNDRED THIRTY SIX DOLLARS ($306.426) within thirty (30) days of the effective date of this Consent Agreement and Final Order and comply with any other terms and conditions set forth in this Consent Agreement and Final Order.

Beatrice Wong

Digitally signed by Beatrice Wong
Date: 2025.09.24 10:15:53 -07'00'

Beatrice Wong
Regional Judicial Officer
United States Environmental Protection Agency, Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Engineered Polymer Solutions (Docket No. RCRA-09-2025-0091) was filed with Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was served on the parties, via electronic mail, as indicated below:

RESPONDENT:

Danny W. Schuerle
Engineered Polymer Solutions
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Commerce, CA 90040
Daniel.w.schuerle@eps-maerials.com

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COMPLAINANT:

Laura Friedli
Assistant Regional Counsel
U.S. EPA – Region IX
Hazardous Waste Section I (ORC-3-1)
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Friedli.Laura@epa.gov

Tu, Ponly

Digitally signed by Tu, Ponly
Date: 2025.09.24 10:28:17 -07'00'

Ponly Tu
Regional Hearing Clerk
U.S. EPA – Region IX