

FILED

Jun 14, 2024

4:12 pm

**U.S. EPA REGION 5
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2024-0014
)	
Midwest Industrial Coatings Inc.)	Consent Agreement and Final Order
Shakopee, MN)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
U.S. EPA ID No.: MNR000107151)	42 U.S.C. § 6928(a)
)	
Respondent.)	
_____)	

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Midwest Industrial Coatings Inc., a corporation doing business in the State of Minnesota.

4. U.S. EPA provided notice of this action to the State of Minnesota pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

5. Where the parties agree to settle one or more causes of action before the filing of

a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

Jurisdiction and Waiver of Right to Hearing

7. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

10. Pursuant to Sections 3002-3005 of RCRA, 42 U.S.C. §§ 6922-6925, U.S. EPA promulgated regulations [codified at 40 C.F.R. Parts 260 through 279,] governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste.

11. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

12. Any violation of regulations promulgated pursuant to Subtitle C or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section

3008 of RCRA, 42 U.S.C. § 6928.

13. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Minnesota final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective February 11, 1985 (50 Federal Register (FR) 3756). Subsequent program revision applications were approved effective on September 18, 1987 (52 FR 27199), June 23, 1989 (54 FR 16361), June 28, 1989 (54 FR 27169), August 14, 1990 (55 FR 24232), August 23, 1991 (56 FR 28709), May 18, 1992 (57 FR 9501), May 17, 1993 (58 FR 14321), March 21, 1994 (59 FR 2998), August 23, 2000 (65 FR 33774), and June 23, 2011 (76 FR 36879).

14. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period, or both.

Factual Allegations

15. Respondent was and is a "person" as defined by Minn. R. 7045.0020, Subpart 66, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

16. Respondent is an "owner" or "operator," as those terms are defined under Minn. R. 7045.0020, Subparts 62 and 64 of a facility located at 4910 12th Ave E, Shakopee MN (Facility).

17. At all times relevant to this Complaint, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

18. Respondent's Facility is a "facility," as that term is defined under Minn. R.

7045.0020, Subpart 24.

19. Respondent's actions and processes at the facility cause the production of "hazardous waste," as that term is defined under Minn. R. 7045.0020, Subpart 33.

20. Respondent is a "generator" of hazardous waste, as that term is defined under Minn. R. 7045.0020, Subpart 31.

21. Since at least 2021, Respondent generated 1000 kilograms or greater of hazardous waste in some calendar months (qualifying it as a "Large Quantity Generator"), which it shipped off-site to a treatment, storage or disposal facility within the United States.

22. On May 15, 2024, U.S. EPA sent to Respondent a Notice of Violation and Opportunity for Settlement.

23. The Notice letter identified RCRA violations, and an option and timeline for resolution of the matter through a streamlined settlement process.

24. The goal of the streamlined settlement process is to quickly and efficiently assess and resolve the matter, bring the facility into compliance, and enter into an agreed upon CAFO.

25. Thereafter, Respondent engaged with U.S. EPA to expeditiously assess the matter agree to the entry of this CAFO.

Alleged Violations

Count I: Notification of Change of Hazardous Waste Activity

26. Complainant incorporates paragraphs 1 through 25 of this CAFO as though set forth in this paragraph.

27. Pursuant to Minn. R. 7045.0206, a generator must determine the quantity of hazardous waste generated per month, so as to allow the generator to determine the

applicability of the provisions of Minn R. 7045.0205 – 7045.0350 that are dependent on quantity generated per month.

28. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), generators are required to file with an authorized State a notification (or if necessary, a subsequent notification) including the types of wastes handled and the type of hazardous waste activity (*e.g.*, change to Large Quantity Generator status).

29. Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), is implemented through EPA Form 8700-12 (OMB 2050-0024), which requires notification if, among other things, a generator's hazardous waste activity changes to Large Quantity Generator status.

30. From at least 2021, Respondent did not submit a notification of the change of the facility's type of hazardous waste activity to Large Quantity Generator status in relevant months, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Count II: Biennial Reporting

31. Complainant incorporates paragraphs 1 through 25 of this CAFO as though set forth in this paragraph.

32. Pursuant to Minn. R. 7045.0248, Subpart 1(B), a generator of more than 1,000 kilograms of hazardous waste must provide to the director or the director's designee the data necessary for the department to prepare and submit Minnesota's hazardous waste report as required. A Biennial Report is due by March 1 of each numbered year.

33. For 2021, Respondent did not prepare and submit a Biennial Report to the Minnesota by March 1 for the preceding calendar year, in violation of Minn. R. 7045.0248, Subpart 1(B).

Compliance Order


34. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Respondent is hereby ordered to comply with the following requirements as expeditiously as possible and no later than 30 days from the effective date of this CAFO.

35. Respondent shall file with Minnesota an updated Notification of RCRA Subtitle C Activities (e.g. Site Identification Form 8700-12), including the types of wastes handled and the type of hazardous waste activity (e.g., change to Large Quantity Generator status). This updated Notification may be filed along with the Annual/Biennial Hazardous Waste Report(s).

36. Respondent shall file with Minnesota a Biennial Hazardous Waste Report covering the year 2021.

37. Respondent shall submit the following certification to U.S. EPA that is has complied with the requirements in paragraphs 34 - 36 above:

I certify under the penalty of law that based on my review of all relevant information and documents, and inquiring of those individuals immediately responsible for providing all relevant information and documents, Midwest Industrial Coatings Inc. is in compliance with the requirements of this Compliance Order. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Date 6/3/24 Signature and Title 

38. If unable to certify compliance in paragraph 37, Respondent shall submit notification explaining why it is unable to comply, the actions it is taking to comply, and a proposed date that it will comply.

39. Respondent shall submit all certifications and notifications required under the

Compliance Order to:

Land Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. EPA, Region 5
R5lecab@epa.gov

And

Stephen Pappa
Enforcement and Compliance Assurance Division
U.S. EPA, Region 5
Pappa.Stephen@epa.gov

Civil Penalty Order

40. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$13,715. In determining the penalty amount, Complainant took into account the above Factual Allegations, the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and other factors as justice may require. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

41. Within 30 days after the effective date of this CAFO, Respondent shall pay a civil penalty of thirteen thousand, seven hundred fifteen dollars (\$13,715) setting forth the opportunity for expedited settlement. Respondent shall pay the penalty 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>.

Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

Land Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
R5lecab@epa.gov

Stephen Pappa
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
Pappa.Stephen@epa.gov

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

42. This civil penalty is not deductible for federal tax purposes.

43. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

44. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

45. Respondent certifies that it is complying fully with the statutory and regulatory provisions alleged violated in this CAFO.

46. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Pappa.Stephen@epa.gov (for Complainant), and dseeler@micicoatings.com (for Respondent).

47. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

48. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

49. Payment of the civil penalty does not affect Respondent's continuing obligation to comply with RCRA and other applicable federal, state, local laws or permits.

50. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

51. The terms of this CAFO bind Respondent, its successors, and assigns.

52. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

53. Each party agrees to bear its own costs and attorney's fees in this action.

54. This CAFO constitutes the entire agreement between the parties.

Midwest Industrial Coatings, Respondent

6/3/24
Date


Dan Seeler
President & CEO
Midwest Industrial Coatings Inc.

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance
Division

**In the Matter of:
Midwest Industrial Coatings inc.
Docket No. RCRA-05-2024-0014**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5