

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the matter of:

Akzo Nobel Coatings Inc.
2837 Roanoke Avenue, S.W.
Roanoke, VA 24015

Respondent,

Akzo Nobel Coatings Inc.
2837 Roanoke Avenue, S.W.
Roanoke, VA 24015

Facility.

:
:
: U.S. EPA Docket RCRA-03-2019-0008
:
: Proceeding under Section 3008(a) and (g)
: of the Resource Conservation and
: Recovery Act, as amended,
: 42 U.S.C. § 6928(a) and (g)

U.S. EPA-REGION 3-RHC
FILED-6DEC2018PM4:32

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division ("Complainant"), U.S. Environmental Protection Agency, Region III ("EPA" or the "Agency"), and Akzo Nobel Coatings Inc. ("Respondent"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and the accompanying Final Order simultaneously commence and conclude this administrative proceeding against the Respondent.

3. On December 18, 1984, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state hazardous waste management program in lieu of the federal hazardous waste program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The provisions of Virginia's hazardous waste management program through this authorization, have become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Amendments to the Virginia Hazardous Waste Management Regulations ("VHWMR") were reauthorized by EPA on June 20, 2003, on July 30, 2008 and again on November 4, 2013 (with revisions not relevant here), and the revisions became effective as requirements of RCRA Subtitle C on those dates. The provisions of Virginia's current authorized revised VHWMR are codified at 9 VAC-20-60-12 *et seq.*
4. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to initiate an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.
5. This Consent Agreement ("CA") and the accompanying Final Order ("FO") (collectively, the "CAFO") address alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g, certain federally-authorized Virginia hazardous waste regulations, set forth at 9 VAC-20-60-12 *et seq.*, in connection with Respondent's facility. Respondent's facility is located at 2837 Roanoke Avenue, S.W., Roanoke, VA 24015 ("Facility"), and is further described below.
6. Factual allegations or legal conclusions in this CA that are based on provisions of federally-authorized VHWMR cite those respective provisions as the authority for such allegations or conclusions.
7. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated November 28, 2017, EPA notified the Virginia Department of Environmental Quality ("VADEQ") of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

II. GENERAL PROVISIONS

8. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
9. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in the CAFO, except as provided in Paragraph 8, above.

10. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
11. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
12. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
13. Respondent shall bear its own costs and attorney's fees.
14. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, or any regulations promulgated and/or authorized thereunder.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
16. EPA has jurisdiction over this matter pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g).
17. Respondent is a corporation incorporated in the Commonwealth of Virginia. Respondent is now, and was at the time of the violations alleged herein, a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 9 VAC 20-60-260.A.
18. At the Facility, Respondent manufactures custom paints and coatings, as well as conducts re-blending, recovery, and redistribution of solvents and other chemicals. The Facility is located on approximately 178,000 square feet in 6 buildings, on 14 acres of land. Respondent has been in operation at this location as Akzo Nobel since 1990.
19. On June 5, 2014, Respondent submitted a Notification of Hazardous Waste Activity ("Notification") for the Facility to VADEQ and to EPA, Region III, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, identifying the Facility as a Large Quantity Generator ("LQG") of hazardous waste. In response, the Facility was assigned (RCRA ID No. VAD000019828). Respondent does not have a permit for the treatment, storage or disposal of hazardous waste at the Facility.

20. From May 1, 2017 to May 24, 2017, Respondent stored hazardous waste at a “facility,” as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260.A.
21. From May 1, 2017 to May 24, 2017, Respondent was the “operator” and the “owner” of a “facility,” described in Paragraph 18, as the terms “facility”, “owner” and “operator” are defined in 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260.A.
22. At all times relevant to the allegations set forth in this CA, Respondent is, and has been, a “generator” of, and has engaged in the accumulation in “containers” at the Facility of materials described below that are “solid wastes” and “hazardous wastes,” as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by 9 VAC 20-60-260.A.
23. On May 23-24, 2017, two inspectors from EPA and one inspector from VADEQ conducted a Compliance Evaluation Inspection at the Facility (“Inspection”), to examine the Facility’s compliance with Subtitle C of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. §§ 6901 *et seq.*, the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the authorized Commonwealth of Virginia Hazardous Waste Management Program, 9 VAC-20-60-12 *et seq.*
24. To gather additional information about the issues raised during the Inspection, and to request documents, EPA sent an information request letter (“IRL”) to Respondent, dated March 2, 2018, pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent responded to this request in a letter dated April 24, 2018.
25. On June 5, 2018, EPA sent a Request to Show Cause (“Show Cause letter”) to Respondent advising it of EPA’s preliminary findings of violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions as to the Respondent’s compliance with the VHWMR at the Facility. On July 11, 2018, representatives of EPA and Respondent met to discuss the violations alleged in the Show Cause letter.
26. On the basis of EPA’s findings during the Inspection and Respondent’s responses to EPA’s Show Cause letter and IRL, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and certain federally-authorized VHWMR requirements promulgated thereunder.

COUNT I

(Operating a Treatment, Storage, and Disposal Facility without a Permit or Interim Status)

27. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

28. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b) (pertaining to the Hazardous Waste Permit Program), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
29. Respondent has never had a permit or interim status, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), for the storage of hazardous waste at the Facility.

Generator Accumulation of Hazardous Waste (the "Generator Permit Exemption")

30. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), with exceptions not relevant here, provides:

[A] generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that: (1) The waste is placed:
(i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or

* * *

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste" . . .

31. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(b) with exceptions not relevant herein, provides:

A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

Generator Permit Exemption: Failure to Mark Containers of Hazardous Waste with Date Accumulation Began or the Words "Hazardous Waste"

32. At the time of the Inspection on May 23-24, 2017, Respondent failed to mark containers of hazardous waste with the date upon which each period of accumulation began, as required by 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a)(2).
33. EPA determined that, at the time of the Inspection on May 23-24, 2017, Respondent failed to mark the following containers of hazardous waste with the date upon which each period of accumulation began: there were a total of seven 55-gallon containers of hazardous waste, consisting of solvent residue, waste solvent, waste paint, and paint filters (all with EPA Hazardous Waste Code D001, D005, D035, F003, F005) located in the covered corridor area, outside of the doorway of the covered corridor area (between paint production building and UV production building), and outside of the QC Lab.
34. At the time of the Inspection on May 23-24, 2017, Respondent failed to label or clearly mark the following containers of hazardous waste with the words, "Hazardous Waste", as required by 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a)(3).
 - a. In the universal waste storage area above the QC Lab, there were six boxes of 48" spent fluorescent lamps, two boxes of 8-foot spent fluorescent lamps, and one box of "U" shaped spent fluorescent lamps.
 - b. In the universal waste storage area above the QC Lab, boxes of spent metal halide lamps were marked as "BAD".

Generator Permit Exemption: Failure to Properly Manage Satellite Accumulation Containers

35. As a condition of meeting the 90-day accumulation permit exemption, 9 VAC 20-60-262 which incorporates by reference 40 C.F.R. § 262.34(c)(1), with exceptions not relevant herein, provides that "[a] generator [of hazardous waste] may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 C.F.R. § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status," provided that the generator, among other things, complies with 40 C.F.R. § 265.173(a), which requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste, and that the generator marks satellite containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers, as required by 40 C.F.R. § 262.34(c)(1)(ii).
36. At the time of the Inspection on May 23-24, 2017, Respondent was accumulating hazardous waste in excess of 55 gallons at the following satellite accumulation areas at the Facility, and thus failed to meet the conditions of 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(c)(1).

- a. In the covered corridor area between the paint production building and the UV production building, across from the Drum Filling Station, there were two 55-gallon containers of hazardous waste, with one for filter bags and one for other discarded sample jars contaminated with residual paint (EPA Hazardous Waste Code D001, D005, D035, F003, F005). These drums were next to each other, and 3 to 4 feet away from a third drum of hazardous waste remaining inside the UV area, with the roll-up door staying open.
 - b. Outside the QC Lab, there were four 55-gallon containers (three being managed as 90-day storage containers, and one managed as a satellite container) (EPA Hazardous Waste Code D001, D005, D035, F003, F005) on pallets next to each other.
37. At the time of the Inspection on May 23-24, 2017, Respondent failed to locate satellite accumulation areas for the containers described in Paragraph 33.a. through e., above, at or near the point of waste generation, and where they were under the control of the operator, as required by 9 VAC 20-60-262, which incorporates by reference 40 CFR § 262.34 (c)(1).
38. Respondent failed to mark the following containers, which were managed in satellite accumulation areas, with the words "Hazardous Waste" or with other words that identify the contents of the containers, as required by 9 VAC 20-60-262, which incorporates by reference 40 CFR § 262.34 (c)(1)(ii):
- a. One open 5-gallon container of hazardous waste lacquer in the pumping station, outside, at the one end of the paint production building, labeled as a "Drip Bucket," with an HMIS label.
 - b. One container, with no lid or cover, in the pumping station outside at one end of the paint production building, which appeared to be the bottom portion of a 55-gallon container, holding hazardous waste paint.
 - c. One open 5-gallon container in the pumping station outside at one end of the paint production building (at the Lacquer Pump known as the "200 Filter and Pump"), holding hazardous waste lacquer, labeled as "Drip Bucket" on an HMIS label.
 - d. One 5-gallon container (within a 10-gallon container) of hazardous waste paint (D001), in the Colorimetry Lab of the QC Lab.

Generator Permit Exemption: Failure to Keep Hazardous Waste Containers Closed

39. As a condition of meeting the 90-day accumulation permit exemption, 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173 with exceptions not relevant herein, provides that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."

40. At the time of the Inspection on May 23-24, 2017, Respondent failed to keep several hazardous waste containers closed except when it is necessary to add or remove waste, as required by 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173, as further described in Count III, below.
41. At the time of the Inspection on May 23-24, 2017, Respondent failed to minimize possibility of release of hazardous waste, as required by 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.31. The containers described in Count III, Paragraphs 37.b. and c., above, were open and were located outdoors at the Facility. Therefore, these open containers posed an increased risk that they would release hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.
42. At the time of the Inspection, in the universal waste storage area above the QC Lab, there were six open boxes of 48" spent fluorescent lamps, two open boxes of 8-foot spent fluorescent lamps, and one open box of "U" shaped spent fluorescent lamps.

Generator Permit Exemption: Failure to Meet Other Requirements of the Exemption

43. For the reasons and during the times set forth above, at the Facility, Respondent failed to comply with the applicable permit exemption conditions set forth at 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), and therefore failed to qualify for an exemption from permitting requirements provided by such section.
44. The requirements of 40 C.F.R. Parts 264 and 265, and the permit requirements of 40 C.F.R. Part 270, apply to the Facility because it failed to meet several conditions of the permit exemption. Respondent's Facility is a hazardous waste treatment, storage or disposal facility with respect to the storage of hazardous waste as described above.
45. From May 1 - 24, 2017, Respondent violated 9 VAC 20-60-270, which incorporates 40 C.F.R. § 270.1(c) and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), by storing hazardous waste at its Facility without a storage permit, interim status or valid exemption to the permitting requirements for storage of hazardous waste.

COUNT II
(Failure to Make a Hazardous Waste Determination)

46. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
47. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.11 (pertaining to Hazardous Waste Determination), with exceptions not relevant herein, requires that "[a] person who generates a solid waste, as defined in 40 C.F.R. § 262.2, must determine if

that waste is a hazardous waste," using the method set forth more fully at 40 C.F.R. § 262.11(a) – (c).

48. At the time of the Inspection, Respondent was storing the following materials at the Facility, the EPA inspectors determined that these materials were solid wastes, but Respondent had not made a determination as to whether these were hazardous wastes.
 - a. Outside, adjacent to Hazardous Waste Accumulation Area #2, Respondent used an area as a consolidation point for returned product, off standard product, and out-of-date raw material and product. Respondent was storing three rows of "miscellaneous" materials in totes, 55-gallon containers, 5-gallon containers, and 1-gallon containers, stacked on pallets. There were more than 120 containers of material in this area. Approximately 12 of the 55-gallon containers were shrink-wrapped and marked as "Returned." Other containers were labelled, "Corrosive," "Flammable Liquid," "Off Standard," and "Do Not Use." Some of the containers were in poor condition.
 - b. Inside the QC Lab of the Facility, Respondent was storing one 30-gallon fiberboard container labeled as "Solid Waste," which held paint waste as well as whole and broken glass containers which were contaminated with paint waste.
 - c. In the Paint Shading Area of the Facility, Respondent was storing one open 55-gallon container, which had a circular opening which had been cut into the container's lid. The container was designated for storing trash; however, in addition to holding trash, this container also held hazardous paint waste and hazardous paint waste contaminated glass containers and cups. This container was located next to a closed 55-gallon container that was labeled as hazardous waste.
49. From at least May 1, 2017 through May 24, 2017, Respondent violated the requirements of 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.11, by failing to perform a hazardous waste determination on numerous containers storing solid wastes.

COUNT III

(Failure to Keep Hazardous Containers Closed Except When it is Necessary to Add or Remove Waste)

50. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
51. 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173 (pertaining to Management of Containers), with exceptions not relevant herein, provides that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."

52. At the time of the Inspection, Respondent was storing the following containers, which were holding hazardous waste. These containers were open at a time when Respondent was not adding or removing waste.
- a. In the pumping station, outside, at the one end of the paint production building, there was one open, gray 5-gallon container of hazardous waste lacquer (EPA Hazardous Waste Code D001, D005, D035, F003, F005), with a lid resting loosely on top of it, which was labeled as a "Drip Bucket," with an HMIS label.
 - b. In the pumping station, outside at one end of the paint production building, there was one container, with no lid or cover, which appeared to be the bottom portion of a 55-gallon container, holding hazardous waste paint (EPA Hazardous Waste Code D001, D005, D035, F003, F005).
 - c. In the pumping station, outside at one end of the paint production building at the Lacquer Pump, attached to the 200 Filter and Pump, there was one gray, open 5-gallon container holding hazardous waste lacquer (EPA Hazardous Waste Code D001, D005, D035, F003, F005), labeled as "Drip Bucket" with an HMIS label.
 - d. In Building 1A, in the Stain Department, there was one open 5-gallon container, with no lid, hanging at the end of an open pipe approximately 5 to 6 feet above the floor, holding hazardous waste resin from a resin pump (EPA Hazardous Waste Code D001, D005, D035, F003, F005). This container was labeled only with an HMIS label.
 - e. In the 90-day hazardous waste accumulation area of the QC Lab at the Facility, there was one open 55-gallon container labeled as "Hazardous Waste 84501 QC Filters" (EPA Hazardous Waste Code D001, D005, D035, F003, F005).
 - f. At the time of the Inspection, in the universal waste storage area above the QC Lab, there were six open boxes of 48" spent fluorescent lamps, two open boxes of 8-foot spent fluorescent lamps, and one open box of "U" shaped spent fluorescent lamps.
53. On May 23 - 24, 2017, Respondent violated the requirements of 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.173, by failing to keep 15 containers of hazardous waste closed during storage, except when it is necessary to add or remove waste.

COUNT IV

(Failure to Maintain Signed Manifests or File Exception Reports)

54. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.

55. 9 VAC 20-60-262 incorporates by reference 40 C.F.R. Part 262, Subpart B (pertaining to The Manifest), and Subpart D (pertaining to Recordkeeping and Reporting), with exceptions not relevant herein.
56. 40 CF.R. § 262.20(a)(1) provides, in relevant and applicable part, that "[a] generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal . . . must prepare a Manifest . . . according to instructions included in the appendix to this part."
57. 40 CF.R. § 262.23(a) further provides that "[t]he generator must (1) Sign the manifest certification by hand; and (2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and (3) Retain one copy, in accordance with § 262.40(a)."
58. 40 CF.R. § 262.40(a) provides that "[a] generator must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter."
59. 40 CF.R. § 262.42(a)(1) provides that a large quantity generator "who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste."
60. 40 CF.R. § 262.42(a)(2) provides that a generator "must submit an Exception Report to the EPA Regional Administrator for the Region in which generator is located if he has not received a copy of the manifest with the handwritten signature of the of the owner or operator of the designated facility within 45 days of date the waste was accepted by the initial transporter."
61. 40 CF.R. § 262.40(b) provides that "[a] generator must keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report."
62. On June 10, 2015, Respondent shipped waste paint (EPA Hazardous Waste Nos. D001, D035, F003, F005) to Clean Harbors under Manifest No. 008328537FLE.
63. On July 29, 2015, Respondent shipped mercury containing lamps (EPA Hazardous Waste No. UN3077) to Safety-Kleen under Manifest No. 008801922FLE.
64. At the time of the Inspection on May 23 - 24, 2017, Respondent did not maintain at the Facility a Manifest signed by the designated facility for the shipment of hazardous waste shipped under Manifest No. 008328537FLE or Manifest No. 008801922FLE, and had not submitted to EPA an Exception Report for either of these shipments.

65. Although Respondent's Facility had not received a copy of Manifest No. 008328537FLE or Manifest No. 008801922FLE with the handwritten signatures of the owners or operators of the designated facilities ("TSDFs") within 45 days of date the waste was accepted by the initial transporter, Respondent failed to file an Exception Report for either of these shipments with the EPA Regional Administrator for the Region in which the Facility is located (Region III).
66. From approximately July 15, 2015 (45 days after the date that hazardous waste shipped under Manifest No. 008328537FLE was accepted by the initial transporter) to at least May 24, 2017 (the date of the Inspection), Respondent violated the requirements of 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.42(a)(2), by failing to timely submit Exception Reports, for hazardous waste shipped under Manifest No. 008328537FLE or Manifest No. 008801922FLE, to the EPA Regional Administrator for the Region in which the Facility is located.

IV. CIVIL PENALTIES

67. Respondent agrees to pay a civil penalty in the amount of **\$25,000.00 (TWENTY-FIVE THOUSAND DOLLARS)** in full and final settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations and facts alleged and set forth in Section III ("EPA Findings of Fact and Conclusions of Law") of this Consent Agreement. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
68. The civil penalty settlement amount set forth in Paragraph 67, immediately above, was determined after consideration of the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g). Complainant has also considered the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, and the January 11, 2018 Memorandum by EPA Assistant Administrator, Susan Parker Bodine, entitled, "Amendments to EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule." The settlement in this proceeding is consistent with the provisions and objectives of Section 3008 of RCRA, and its implementing regulations.
69. Payment of the civil penalty set forth in Paragraph 67, above, and any associated interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 71

through 74, below, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this Consent Agreement, i.e., RCRA03-2019-0008;
- b. All checks shall be made payable to "**United States Treasury**;"
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Fine and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Customer service contact: 513-487-2091

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

- h. On-Line Payment Option: WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

or by contacting Craig Steffen at 513-487-2091

- 70. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029;

and

Natalie Katz
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

71. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
72. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest 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).
73. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
74. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
75. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

V. CERTIFICATIONS

76. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent is in compliance with all relevant provisions of the current, authorized revised VHWMR and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, for which violations are alleged in this Consent Agreement.

VI. OTHER APPLICABLE LAWS

77. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VII. RESERVATION OF RIGHTS

78. This CAFO resolves only EPA's claims for civil penalties for the specific violations and

facts which are alleged in this Consent Agreement. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

VIII. FULL AND FINAL SATISFACTION

- 79. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this Consent Agreement.

IX. PARTIES BOUND

- 80. This CAFO shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this CAFO.

X. EFFECTIVE DATE

- 81. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

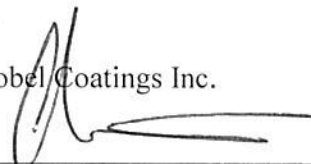
XI. ENTIRE AGREEMENT

- 82. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

Date: 16 NOV 2018

Akzo Nobel Coatings Inc.

By: 
NAME: MARK BOOTH
TITLE: MANUFACTURING DIRECTOR

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75. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

V. CERTIFICATIONS

76. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent is in compliance with all relevant provisions of the current, authorized revised VHWMR and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, for which violations are alleged in this Consent Agreement.

VI. OTHER APPLICABLE LAWS

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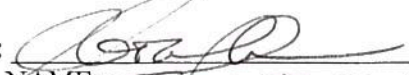
VII. RESERVATION OF RIGHTS

78. This CAFO resolves only EPA's claims for civil penalties for the specific violations and

For Respondent:

Akzo Nobel Coatings Inc.

Date: 28 NOV 2018

By: 
NAME: JOHN GRIFFIN
TITLE: PRESIDENT

For the Complainant:

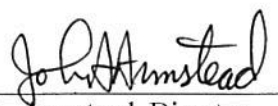
U.S. Environmental Protection Agency, Region III

Date: 12-3-2018

By: 
Natalie L. Katz
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact and Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 12.6.18

By: 
John A. Armstead, Director
Land and Chemicals Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the matter of:	:	
	:	
Akzo Nobel Coatings Inc.	:	U.S. EPA Docket RCRA-03-2019-0008
2837 Roanoke Avenue, S.W.	:	
Roanoke, VA 24015	:	Proceeding under Section 3008(a) and (g)
	:	of the Resource Conservation and
Respondent,	:	Recovery Act, as amended,
	:	42 U.S.C. § 6928(a) and (g)
Akzo Nobel Coatings Inc.	:	
2837 Roanoke Avenue, S.W.	:	
Roanoke, VA 24015	:	
	:	
Facility.	:	
	:	

U.S. EPA-REGION 3-RHC
FILED-6DEC2018pm4:32

FINAL ORDER

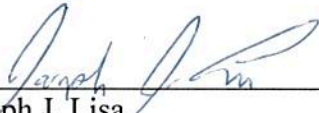
Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency, Region III, and Akzo Nobel Coatings Inc. (“Respondent”), have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. § 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 (“RCRA Penalty Policy”), and the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) (“RCRA”), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty payment **\$25,000.00 (TWENTY-FIVE THOUSAND DOLLARS)**, in accordance with the payment provisions set forth in of the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk.

Dec. 6, 2018
Date:



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the matter of: :
: :
Akzo Nobel Coatings, Inc. : U.S. EPA Docket RCRA-03-2019-0008
2837 Roanoke Avenue, S.W. : :
Roanoke, VA 24015 : Proceeding under Section 3008(a) and (g)
: of the Resource Conservation and
Respondent, : Recovery Act, as amended,
: 42 U.S.C. § 6928(a) and (g)
Akzo Nobel Coatings, Inc. :
2837 Roanoke Avenue, S.W. :
Roanoke, VA 24015 :
: Facility. :
:

CERTIFICATE OF SERVICE

I certify that on DEC 06 2018, the original and one (1) copy of the foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via UPS Next Day Delivery, to:

Mr. Gene Bowden, Site Manager
Akzo Nobel Coatings, Inc.
2837 Roanoke Avenue, S.W.
Roanoke, VA 24015

Ms. Katherine Rahill
Akzo Nobel Inc.
525 West Van Buren Street
Chicago, Illinois 60607

Copies served via Hand Delivery or Inter-Office Mail to:

Natalie Katz
Senior Assistant Regional Counsel
ORC - 3RC30
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Eric Greenwood
RCRA Inspector
LCD - 3LC32
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: DEC 06 2018

Berwin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBERS: 12 A43 F7101 95337463
12 A43 F7101 95258450