UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 28 2020

REPLY TO THE ATTENTION OF

VIA EMAIL

Mr. Douglas G. Haynam, Esq.
Shumaker, Loop & Kendrick, LLP
1000 Jackson Street
Toledo, Ohio 43604-5573
dhaynam@shumaker.com

Re: Consent Agreement and Final Order
Hale Performance Coatings, Incorporated
Docket No: **RCRA-05-2020-0008**

Dear Mr. Haynam:

Attached please find a copy of the signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on February 28, 2020, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of $95,242 in the manner prescribed in paragraph 105 of the CAFO, and reference all checks with the docket number **RCRA-05-2020-0008**. Your payment is due within 30 calendar days, or alternately within 150 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions, your staff may contact me at (312) 886-0989 or at gangwisch.bryan@epa.gov.

Sincerely,

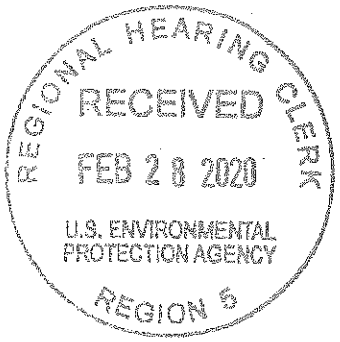
Bryan Gangwisch
Land and Chemicals Enforcement and Compliance Assurance Branch

Enclosure

cc: Mitchell Mathews, Mitchell.Mathews@epa.ohio.gov (w/CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. RCRA-05-2020-0008**
	)	
Hale Performance Coatings, Inc.	)	**Proceeding to Commence and Conclude**
	)	**an Action to Assess a Civil Penalty**
Toledo, Ohio,	)	**Under Section 3008(a) of the Resource**
	)	**Conservation and Recovery Act**
	)	**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, as amended (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, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

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

3. U.S. EPA provided notice of commencement of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2) on May 20, 2019.

4. Respondent is Hale Performance Coatings, Inc., ("Hale" or "Respondent") a corporation doing business in the State of Ohio.

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.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

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

9. For the purpose of this proceeding, Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. 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

11. U.S. EPA has 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, pursuant to Sections 3001 – 3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934.

12. Among other requirements, U.S. EPA promulgated regulations at 40 C.F.R. Part 270, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste to have a permit issued under that Section.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of 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. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, 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.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989, (54 Fed. Reg. 27170, June 28, 1989). U.S. EPA subsequently approved amendments to the Ohio hazardous waste program effective June 7, 1991, (56 Fed. Reg. 14203, April 8, 1991); effective August 19, 1991, (56 Fed. Reg. 28088, June 19, 1991); effective September 25, 1995, (60 Fed. Reg. 38502, July 27, 1995); effective December 23, 1996, (61 Fed. Reg. 54950, October 23, 1996); effective January 24, 2003, (68 Fed. Reg. 3429, January 24, 2003); effective January 20, 2006, (71 Fed. Reg. 3220, January 20, 2006); effective October 29, 2007, (72 Fed. Reg. 61063, October 29, 2007); effective March 19, 2012, (77 Fed. Reg. 25966, March 19, 2012); and effective February 12, 2018, (83 Fed. Reg. 5948, February 12, 2018).

15. 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 of time, or both.

16. The Administrator of U.S. EPA may assess a civil penalty of up to $99,681 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015, and where the penalties are assessed on or after January 15, 2019, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. Respondent is a corporation registered in the State of Ohio since December 1, 1966. It changed its name from Hale Chrome Service, Inc. to Hale Performance Coatings, In. on or about April 22, 2010.

18. Respondent performs electroplating (hard chrome – steel parts), electroless nickel plating (aluminum and steel parts), brass bright dip (brass parts), electropolishing, high velocity oxygen fuel (HVOF) thermal spraying, black oxide metal finishing, blasting, and polishing at 2282 Albion Street, Toledo, Ohio ("Facility").

19. Ohio Administrative Code (OAC) § 3745-50-10(A)(102), [40 C.F.R. § 260.10[1] and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15)], defines a "person" to include, but not be limited to, an individual, trust, firm, corporation, partnership or association. Respondent is a person since it is a corporation incorporated in and doing business in the State of Ohio.

20. At all times relevant to this CAFO, Respondent's processes at the Facility generated solid wastes which were hazardous wastes. including, but not limited to: spent sodium hydroxide solution (removing chromium from parts); Mold Shop polishing dust, polishing, black oxide operations and mop water waste from those operations; waste from Conical Tank (cleanout of nickel pit); waste dry chromium sludge; spent hydrochloric acid solution from cleaning and stripping parts; sludge from plating tanks (chromium lines); rinse water from brite dip wash; spent clean all 2 solvent; bright dip bath and post treatment; waste nickel filters; spent nitric acid solution to strip nickel from parts and tank; clothing contaminated with lead; spent electropolishing bath; spent sulfuric acid/hydrogen peroxide solution (nickel strip); grinding

[1] The citations to the rules contained in the Ohio Administrative Code are the federally enforceable regulations in the State of Ohio. References to the federal regulations are for ease of reading and are to the June 2016 version of the Code of Federal Regulations. EPA re-codified the generator rules into 40 C.F.R. § 262.17. See, *Hazardous*

fluid/coolant; tank cleanup; concrete pieces (from dismantling of process chrome tanks); spent rags with solvent; spent iso prep (bright dip); ultra black (black oxide bath); spent rust preventative oil (black oxide) black oxide cleaner and pre-cleaner; spent chrome filters (Tank 8); spent aluminum brightener cleaner; spent petroleum distillates; spent phosphoric acid (de-scale); spent sand blast cloth filters; spent safe scrub; spent zincate (nickel operation); brite dip brass evaporation tank water; brite dip cleaner solution; hydrogen peroxide solution/brite dip bath; electropolishing rinse water (electrogleem); electroless nickel plating with cleaning waste; and chrome plating bath and plating rinse water.

21. On April 1, 2016, the Respondent submitted its 2015 Comprehensive Biennial Report. On February 15, 2018, the Respondent submitted its 2017 Comprehensive Biennial Report. Respondent identified itself as a Large Quantity Generator of hazardous waste at its Facility for calendar years 2015 and 2017. It identified the following waste streams, hazardous waste codes and amounts:

Waste Description	**Waste Code**	**Tons-2015**	**Tons-2017**
Aluminum Brightener Solution	D002	0.02	
Black Nickel Solution	D002, D007		0.50
Black Oxide Line Precleaner	D002	0.51	
Black Oxide Cleaner Solution	D002	0.97	0.15
Brite Dip	D001, D002, D008, F003	3.79	
Brite Dip Brass Evap Tank Water	D002, D008		3.16
Brite Dip Post Treatment	D001, F003		1.21
Brite Dip Skim Pads	D008		0.04
Chrome Filters	D002, D007	0.25	
Chrome Plating Bath	D002, D006, D007, D008		1.15

Waste Generator Improvement Rule, 81 Fed. Reg. 5808, November 28, 2016. The State of Ohio has not yet been authorized for the re-codified rules and therefore, they are not federally enforceable.

Chrome Plating Rinsewater	D002, D006, D007, D008		3.24
Chrome Plating Sludge/Rinse	D007, D009		0.49
Chromium Debris Dry	D007, D008		4.55
Chromium Debris with Chromic Acid – Sludge	D002, D007, D008		0.15
Chromium Solid Sludge (Dry) From Tank	D007, D009	10.45	
Clean All 2	D002, D005, D007, D008		4.30
Cleaning Fluid Raw Material (Discontinued)	D002, D005, D007, D008	7.18	
Clothing Contaminated with Lead	D008	0.23	
Concrete Pieces	D007, D008	2.54	
Electrogleem 55	D002	0.15	5.25
Evaporator Drip Pan Cleanout	D002, D008	0.15	2.54
Ferric Chloride Solution	D002		0.75
Grinding Fluid	D007	0.92	0.26
Grinding Sludge	D011		0.05
Hydrochloric Acid Solution	D002, D007	1.51	8.34
Hydrochloric Acid Cleanup	D002, D007		0.02
Hydrogen Peroxide Solution/Brite Dip Bath	D001, D002		1.26
Isoprep	D002	1.26	
Nickel Boron Solution	D002, D008		0.60
Nickel Pit (Clean Out)	D002, D006, D007, D008	0.25	0.73
Nickel Pit Waste	D002, D006, D007, D008		31.48
Nitric Acid Solution to Strip Nickel from Parts and Tank	D002	1.21	3.02
Nickel Filters (Waste)	D007, D008	2.26	2.30
Nickel Pit Sludge	D002, D007, D008	1.10	1.56
Nicklad Eclipse	D002		0.28
Nitric Acid Spill Cleanup	D002		0.15
Oxalic Acid Solution	D002	0.02	
Petroleum Distillates	D001	0.02	0.22
Phosphoric Acid	D002	3.79	
Potassium Hydroxide Solution	D002		0.25
Rust Preventive Oil	D002	0.73	2.30
Safe Scrub	D002	0.03	
Sandblast Cloth Filters	D008	0.23	
Sludge Plating Tanks	D002, D006, D007, D008	28.31	

Sodium Hydroxide Solution Bulk	D002, D007, D008	28.10	10.54
Solvent Contaminated Rags	D001, D007, D035, F003, F005	0.69	1.94
Solvent - Spent Non-Halogenated Flammable Solvent from Cleaning Parts	D001, D0035, F003, F005	0.51	0.10
Sulfuric Acid	D002		1.22
Sulfuric Acid/Hydrogen Peroxide Solution	D002	11.75	13.35
Tank Clean Up	D006, D007, D008	1.06	
Tank Liner	D007, D008		0.34
Ultrablack	D001, D002	2.66	45.82
Woods Nickel Strike	D002		5.37
Zincate	D002	0.20	

22. The wastes identified in paragraphs 20 and 21 above were "waste" as that term is defined under OAC § 3745-51-02, [40 C.F.R. § 261.2], because they were materials that were discarded by being either treated, stored or disposed off-site or stored on-site prior to being sent off-site for treatment, storage or disposal.

23. On at least June 8, 2016, Respondent accumulated, stored, treated or managed some of the wastes identified in paragraphs 20 and 21 in eight (8) tanks and nine (9) evaporators that were at the Facility. The Respondent identified these wastes with the hazardous waste codes D001, D002, D006, D008, D007, D009, F003 or F005. The tanks and associated wastes were identified as follows:

a. the Black Oxide Tank which accumulated, stored or managed wastes described as including, but not limited to, ultra black and spent liquids from the black oxide line;

b. the Mold Shop Tank #7 and its 3 evaporator tanks which accumulated, stored or managed wastes described as including, but not limited to, wastewaters from

the chrome polishing and black oxide operations and mop water from these operations;

c. the Mold Shop Heating Tank which accumulated, stored or managed wastes described as including, but not limited to, waste water from the chrome polishing, black oxide operations and mop water generated from these operations;

d. the Bright Dip Tank and its 1 evaporator tank which accumulated, stored or managed wastes described as including, but not limited to, Brite Dip cleaner solution, hydrogen peroxide solution and Brite Dip Bath liquids;

e. the Large Nickel Conical Tank and its two evaporator tanks which accumulated, stored or managed wastes described as including, but not limited to, wastes from the electroplating lines and associated mop water, wastes from the electroless nickel operations and rinse waters from the nickel pit;

f. the Chrome Tank and 1 evaporator tank which accumulated, stored or managed wastes described as including, but not limited to, chrome plating bath and plating rinse waters;

g. the Electropolishing Tank and its two evaporator tanks which accumulated, stored or managed wastes described as including, but not limited to, electrogleem and electropolishing rinse waters from the electropolishing lines;

h. the Bench/Shop Built Tank which accumulated, stored or managed wastes described as including, but not limited to, wastes associated with the Nickel pit, the electroless nickel plating and acids.

24. On at least June 8, 2016, Respondent stored, accumulated or managed in containers

in various satellite accumulation areas wastes it identified paragraphs 20 and 21. It identified the wastes with waste codes D002, D007, D008 and/or it otherwise indicated that the wastes were hazardous wastes. The containers and the wastes included, but were not limited to, the following:

a. four 55-gallon drums located in Building 1 at the Front Shop with wastes described as including, but not limited to, rust preventive oil, sodium hydroxide solution, dry chromium solids or debris, solid chromium/lead;

b. two 10-gallon containers located near Tank 8 near the Chrome Process in the Mold Shop and near Tanks 2 and 3 in Building 1 near the Front Shop with wastes described as including, but not limited to, dry chrome and/or bottom/clean-out;

c. three 5-gallon containers near the Brite Dip area with wastes described as including, but not limited to, Brite Dip evaporator sludge;

d. 1 trash container near the Large Nickel Line with wastes described as including, but not limited, to solvent lacquer thinner contaminated rages; and

e. two 55-gallon drums located near the Chrome Line, Process Tank 11, Electropolish Process and Nickel Line with wastes described as including, but not limited to, sodium hydroxide.

25. The Respondent characterized the wastes it generated at the Facility and that are identified above with the characteristic hazardous waste codes D001 (ignitable), D002 (corrosive), D005 (toxic for barium), D006 (toxic for cadmium), D007 (toxic for chromium), D008 (toxic for lead), D009 (toxic for mercury), F003 (listed spent non-halogenated solvents) or F005 (listed spent non-halogenated solvents).

26. Pursuant to OAC § 3745-51-03, [40 C.F.R. § 261.3] a waste is a hazardous waste if it exhibits a characteristic of hazardous waste identified in OAC § 3745-51-20 to OAC § 3745-51-24, [40 C.F.R. §§ 261.20 to 261.24] or the waste is listed in OAC § 3745-51-30 to OAC § 3745-51-35, [40 C.F.R. §§ 261.30 to 261.35].

27. Pursuant to OAC § 3745-51-20 to § 3745-51-24, [40 C.F.R. §§ 261.20 to 261.24], a waste is a characteristic hazardous waste if it is ignitable, corrosive, reactive or toxic as defined in the rules.

28. OAC §§ 3745-51-30 to OAC 3745-51-35, [40 C.F.R. §§ 261.30 to 261.35], lists specific waste streams that are hazardous waste. OAC § 3745-51-31, [40 C.F.R. § 261.31], lists wastes from non-specific sources that are hazardous wastes and identifies these wastes with an F code. Certain spent non-halogenated solvents are listed and denoted with the waste code F003 or F005.

29. The wastes identified above are "hazardous waste" as that term is defined under OAC § 3745-51-03, [40 C.F.R. § 261.3], because the Respondent characterized them as hazardous waste and/or they exhibited a hazardous waste characteristic or were an F-listed hazardous waste.

30. OAC § 3745-50-10(A)(54), [40 C.F.R. § 260.10], defines a generator to mean any person, by site, whose act or process produces hazardous waste identified or listed in OAC §3745-51 [40 C.F.R. § 260.10]or whose act first causes a hazardous waste to become subject to the hazardous waste rules.

31. On or about July 30, 1991, Respondent submitted an initial Hazardous Waste Notification for the Facility. Respondent identified itself as a large quantity generator of hazardous waste. It subsequently submitted documents to Ohio EPA including, but not limited

to, the 2015 and 2017 Comprehensive Biennial Reports in which it identified and/or certified that it was a large quantity generator of hazardous waste.

32. Respondent was a "generator," of hazardous wastes as defined in OAC § 3745-50-10(51), [40 C.F.R. § 260.10] because it either identified itself as a generator and/or did in fact generate hazardous waste and was the person who first produced the hazardous wastes identified above.

33. Respondent is subject to the regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 – 6939e, or the analogous Ohio regulations as part of the applicable state hazardous waste management program for the state of Ohio, or both.

34. Respondent has not submitted Part A of the hazardous waste permit application for its Facility.

35. The State of Ohio has not issued a permit to Respondent to treat, store, or dispose of hazardous waste at its Facility.

36. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the facility.

37. On June 8, 2016, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (the inspection).

38. On January 25, 2017, U.S. EPA issued a Notice of Violation to Respondent alleging violations of RCRA at its Facility.

39. On June 20, 2016, February 28, 2017, June 21, 2017, September 5, 2017, March 15, 2018, and July 31, 2019, Respondent submitted to U.S. EPA written responses to the inspection and to the Notice of Violation.

Count 1

Failure to Conduct Tank Assessment and Maintain Records of Tank Assessments

40. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

41. At the time of the inspection Respondent accumulated, stored, treated or managed hazardous wastes with the waste codes including, but not limited to, D001, D002, D006, D007 or D007 in eight (8) tanks with nine (9) evaporator tanks. The tanks were identified as the Black Oxide Tank, the Mold Shop Tank #7 and its 3 evaporator tanks, the Mold Shop Heating Tank, the Bright Dip Tank and its 1 evaporator tank, The Large Nickel Conical Tank and its two evaporator tanks, the Chrome Tank and 1 evaporator tank, the Electropolishing Tank and its two evaporator tanks and the Bench/Shop Built Tank.

42. During the EPA inspection, the Conical Tank was situated over a concrete liner that was not coated and had cracks and gaps in it. This area was previously used to collect or store nickel pit waste in an open pit in the floor where the Conical Tanks was located at the time of the inspection.

43. OAC § 3745-50-10(A)(130), [40 C.F.R. § 260.10], defines a tank as a stationary device, designed to contain an accumulation of hazardous waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support. The tanks and evaporators identified in paragraph 41 above were tanks as that term is defined under OAC § 3745-50-10(130), [40 C.F.R. § 260.10], because they contained hazardous waste and were made of non-earthen materials such as metal or polypropylene.

44. Respondent discontinued using the Black Oxide Tank, the Mold Shop Tank #7 and

its evaporator tanks and the Mold Shop Heating Tank sometime between June 8, 2016, and February 28, 2017.

45. On June 15 and 16, 2017, Schreiber, Yonley and Associates (SYA), on behalf of the Respondent, inspected the Brite-Dip, Electropolish, Large Nickel, Chromium Plating and Bench Tanks identified in paragraph 41 and their associated evaporators. On September 5, 2017, SYA completed a report and certified these tanks and evaporators were in compliance with the RCRA tank assessment requirements of OAC § 3745-66-92, [40 C.F.R. § 260.10]

46. OAC § 3745-50-10(A)(127), [40 C.F.R. § 260.10], defines "storage" to mean the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

47. OAC § 3745-50-10(A)(142), [40 C.F.R. § 260.10], defines "treat" or "treatment" as any method, technique or process designed to change the physical, chemical or biological characteristics or composition of any hazardous waste; to neutralize the waste; to recover energy or material resources from the waste; to render the waste non-hazardous or less hazardous, safer to transport, store or dispose of, or amenable for recovery, storage, further treatment, or disposal; or to reduce the volume of the waste.

48. From at least June 8, 2016, Respondent's accumulating, storing or holding its generated hazardous wastes as alleged above in the tanks identified in paragraph 41 constituted hazardous waste "storage," as that term is defined under OAC § 3745-50-10(127), [40 C.F.R. § 260.10], since Respondent held hazardous wastes in these tanks and then arranged for them to be transported off-site.

49. From at least June 8, 2016, Respondent's operation of the evaporators associated with the tanks identified in paragraph 41 constituted "treatment" as that term is defined in OAC §

3745-50-10(142), [40 C.F.R. § 260.10], since the evaporators changed the physical or chemical composition of the hazardous wastes accumulated or stored in them and reduced the volume of the hazardous waste.

50. OAC § 3745-50-10(A)(131), [40 C.F.R. § 260.10], defines "tank system" as a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

51. OAC § 374-50-10(A)(6), [40 C.F.R. § 260.10], defines "ancillary equipment" to mean any device, including, but not limited to, such devices as piping, fittings, flanges, valves and pumps, that are used to distribute, meter or control the flow of hazardous waste from the point of generation to a storage or treatment tank, between hazardous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

52. The tanks, piping, secondary containment and ancillary equipment associated with the tanks identified in paragraph 41 are part of a tank system as defined in OAC §§ 3745-50-10(A)(6) and (131), [40 C.F.R. § 260.10], since they include tanks used to treat or store hazardous waste with associated piping used to transport the hazardous waste.

53. Pursuant to OAC § 3745-52-34(A)(1)(b), [40 C.F.R. § 262.34(a)], a generator may, for ninety days or less, accumulate or conduct treatment of hazardous waste that is generated on-site and placed in tanks without an Ohio hazardous waste permit, provided the generator complies with OAC §§ 3745-66-90 to 3745-66-101, [40 C.F.R. § 265.190-201], and other requirements.

54. Pursuant to OAC § 3745-55-92(A), [40 C.F.R. § 265.192(a)], the owner or operator of a "new tank system" must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable), are adequately designed; that the tank system has sufficient

structural strength; is compatible with the waste(s) to be stored or treated in them; and has corrosion protection so that it will not collapse, rupture or fail. The owner or operator must obtain a written assessment reviewed and certified by a qualified Professional Engineer attesting that the system has sufficient structural strength and is acceptable for storing or treating of hazardous waste.

55. OAC § 3745-50-10(A)(89), [40 C.F.R. § 260.10], defines a "new tank system" or "new component of a tank system" as a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986.

56. For new tank systems the tank assessment must include information on the design standards to which the new tank and ancillary equipment is or will be constructed; the hazardous characteristics of the waste(s) to be handled; a corrosion analysis if the new tanks or systems will be in contact with the soil or water; and design considerations to ensure the structural integrity of the tank system.

57. Pursuant to OAC § 3745-66-92(A), [40 C.F.R. § 265.192(a)], prior to installation of a new tank system the owner or operator must ensure that the foundation, structural support, seams, connections and pressure controls are of sufficient strength, are compatible with the wastes and have corrosion protection such that the tanks do not collapse, rupture or fail. Pursuant to OAC §§ 3745-66-92(A)(1),(2) and (5)(a), (B), (D) and (E) , [40 C.F.R. §§ 265.192(a)(1), (2) and (5)(a), (b), (d) and (e)] the owner or operator must have a written assessment reviewed and certified by a professional engineer which addresses specific requirements, including, but not limited to: the design of the tanks system; the characteristics of the wastes to be handled; the structural support for the tanks; that the design criteria includes,

ensuring that proper handling procedures were followed to prevent damage to the tanks system during installation; that the new tank and ancillary equipment were tested for tightness prior to being placed in use; that the ancillary equipment is supported and protected against physical damage and excessive stress; and the type and degree of corrosion protection necessary to ensure the integrity of the tank system during use of the tank system.

58. OAC § 3745-66-92(G) [40 C.F.R. § 264.192(g)] requires the owner or operator to obtain and keep on file at the facility the written statements identified in paragraph 57 above.

59. The tanks identified in paragraph 41 were installed after July 14, 1986, and are consequently new tank systems as defined by OAC § 3745-50-10(A)(89), [40 C.F.R. § 260.10].

60. Respondent was required to have a tank assessment prior to operation of these tanks.

61. From at least June 8, 2016, to September 5, 2017, Respondent did not conduct a tank assessment for the tanks identified in paragraph 41 and their ancillary equipment, including piping or secondary containment and did not have a copy of a tank assessment on-site.

62. Pursuant to OAC § 3745-52-34(A)(1)(b) and § 3745-66-94(B), [40 C.F.R. §§ 262.34(a)(1) and 265.194(b)], Respondent was required to use appropriate controls and practices to prevent spills and overflows from tanks or secondary containment systems. These controls and practices include, but are not limited to, spill prevention controls (e.g., check valves, dry disconnect couplings) and overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank). The Respondent did not have spill prevention controls nor overfill prevention controls in place on the tanks identified in paragraph 41 at the time of the inspection.

63. At the time of the inspection and subsequently, the Respondent did not have and had not applied for a hazardous waste permit pursuant to OAC §§ 3745-50-45(A), 3745-50-41(A)

and (D), [40 C.F.R. §§ 270.1(c) and 270.10(a)].

64. Respondent's failure to have copies of written assessments and to conduct the tank assessment for the tanks and ancillary equipment identified in paragraph 41 violated OAC § 3745-52-34(A)(1)(b), [40 C.F.R. § 262.34(a)], and OAC §§ 3745-66-92(A)(1),(2) and (5)(a), (B), (D), (E) and (G), [40 C.F.R. §§ 265.192(a)(1), (2) and (5)(a), (b), (d), (e) and (g)].

65. Respondent's failure to use appropriate controls and practices to prevent spills and overflows from tanks or secondary containment systems for the tanks identified in paragraph 41 violated OAC § 3745-52-34(A)(1)(b) and § 3745-66-94(B), [40 C.F.R. §§ 262.34(a)(1) and 265.194(b)].

66. Respondent's failure to conduct tank assessments, have written tank assessments and use appropriate controls and practices to prevent spills and overflows from tanks or secondary containment systems as alleged in this Count 1 and its failure to apply for or have a permit also resulted in the Respondent violating OAC §§ 3745-50-45(A)and 3745-50-41(A) and (D), [40 C.F.R. §§ 270.1(c) and 270.10(a) and (d)].

67. The Respondent has corrected the violations alleged in this Count 1 and certifies that it is in compliance with these requirements.

Count 2

Failure to conduct inspections and inadequate secondary containment.

68. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

69. Pursuant to OAC §3745-52-34(A)(1)(b), [40 C.F.R. § 262.34(a)], a generator may, for ninety days or less, accumulate or conduct treatment of hazardous waste that is generated on-site and placed in tanks without an Ohio hazardous waste permit, provided the generator

complies with OAC §§ 3745-66-90 to 3745-66-101, [40 C.F.R. § 265.190-201], and other requirements.

70. OAC § 3724-66-93(A), [40 C.F.R. §265.193(A)] requires secondary containment for all new tank systems prior to their being placed into service. OAC §§ 3745-66-93(B)-(F) set out the requirements for the secondary containment. The secondary containment must include leak detection capabilities and must be free from cracks or gaps.

71. OAC §§ 3745-66-95(A)-(C) , [40 C.F.R. §§ 265.195(a)-(c)], require daily and weekly inspections. The owner or operator must conduct daily inspections of data gathered from monitoring and leak detection systems for tank systems, where such equipment is present. It must conduct daily observations of overfill or spill control equipment, above ground portions of tanks and the construction materials and the area immediately surrounding externally accessible portions of tank systems. If the owner or operator uses either leak detection equipment or workplace practices to ensure leaks are promptly identified from overfill and spill control equipment, then the owner or operator must conduct weekly inspections of above-ground portions of the tank system, their construction materials and the area immediately surrounding the externally accessible portion of the tank system, including secondary containment structures (e.g., dikes). OAC § 3745-66-95(G), [40 C.F.R. § 265.195(g)], requires the owner or operator to document these inspections in its operating record.

72. From at least June 8, 2016, and until February 28, 2017, the Respondent did not have monitoring and leak detection devices and did not conduct daily or weekly inspections of the tanks and evaporators identified in paragraph 41 as required by OAC §§ 3745-66-93(A)-(E) and 66-95(A),-(C), [40 C.F.R. §§ 265.193(a)-(e) and 265.195(a)-(c)]. Consequently, Respondent

violated OAC §§ 3745-66-93(A)-(E) and 66-95(A)-(C), [40 C.F.R. §§ 265.193(a)-(e) and 265.195(a)-(c)].

73. From at least June 8, 2016 to February 28, 2017, Respondent did not have records required by OAC § 3745-66-95(G), [40 C.F.R. § 265.195(g)]. Consequently, Respondent violated OAC § 3745-66-95(G), [40 C.F.R. § 265.195(g)].

74. At the time of the inspection and subsequently, the Respondent did not have and had not applied for a hazardous waste permit pursuant to OAC §§ 3745-50-45(A), 3745-50-41(A) and (D), [40 C.F.R. §§ 270.1(c); and 270.10(a)].

75. Respondent's failure to have a leak detection system and its failure to conduct or document the inspections required for the hazardous waste tanks and evaporators identified in paragraph 41 violated OAC § 3745-52-34(A)(1)(b), [40 C.F.R. § 262.34(a)]and OAC §§ 3745-66-93(A)-(E) and 66-95(A)-(C), [40 C.F.R. §§ 265.193(a)-(e) and 66-95(a)-(c) and (g)].

76. From at least June 8, 2016, the Respondent failed to have adequate secondary containment for the Large Nickel Line – Conical Tank due to the cracks and gaps observed in the secondary containment as alleged in paragraph 42. Consequently, for the Large Nickel Line – Conical Tank Respondent's failure to have adequate secondary containment violated OAC § 3745-52-34(A)(1)(b), [40 C.F.R. § 262.34(a)] and OAC § 3745-66-93(A)-(E), [40 C.F.R. § 265.193(a)-(e)].

77. Respondent's failure to have leak detection systems, to conduct or document the required inspections or to have adequate secondary containment as alleged in this Count 2 and its failure to apply for or have a permit resulted in the Respondent violating OAC § 3745-50-45(A), §§ 3745-50-41(A) and (D), [40 C.F,R. §§ 270.1(c) and 270.10(a) and (d)].

78. The Respondent has corrected the violations alleged in this Count 2 and certifies

that it is in compliance with these requirements.

Count 3

Failure to Properly Label Containers and Tanks

79. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

80. During the inspection the following containers were located in satellite accumulation areas (SAA) without the words "hazardous waste" or other words that identified the contents of the containers (six containers); were open (nine containers); or were located in areas that were not near where the hazardous waste was generated (one container):

a. two 10-gallon containers holding chrome debris (D007) that were open and not labelled – one located in Building 1, at the Front Shop by Tank 2 and Tank 3 and one located in the Mold Shop near Tank 8 Chrome Process;

b. three 5-gallon containers that held hazardous waste bright dip evaporator waste sludge that were open and not labelled in the Bright Dip Area. The Respondent identified bright dip wastes on its 2015 Biennial Report with the waste codes D001, D002, D008 and F003.

c. three 55-gallon drums in Building 1, Front shop accumulating hazardous waste were open. The Respondent indicated that the wastes consisted of rust preventive oil, sodium hydroxide solution and dry chromium solid/debris and solid chromium lead.

d. one 55-gallon drum in Building 1, Front Shop accumulating hazardous waste with the code D008 that was not near the location where the hazardous waste

was generated (i.e., the Lead Room).

e. one 55-gallon drum labelled hazardous waste near the Chrome Line and Process Tank 11 did not have the accumulation start date on the label. The Respondent verbally indicated that the waste consisted of sodium hydroxide.

f. One trash container located near the Large Nickel Line and containing solvent lacquer thinner-contaminated rags was not labeled and was open.

81. At the time of the inspection Respondent accumulated, stored, treated or managed hazardous wastes with the waste codes including, but not limited to, D001, D002, D006, D007 or D008 in the following tanks without labelling them with the words "hazardous waste:" the Black Oxide Tank, the Mold Shop Tank #7 and its 3 evaporator tanks, the Mold Shop Heating Tank, the Bright Dip Tank and its 1 evaporator tank, The Large Nickel Conical Tank and its two evaporator tanks, the Electropolishing Tank and its two evaporator tanks.

82. At the time of the inspection and subsequently, the Respondent did not have and had not applied for a hazardous waste permit pursuant to OAC §§ 3745-50-45(A), 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c); and 270.10(a)].

83. OAC § 3745-52-34(A)(3), (C)(1) and (2), [40 C.F.R. § 262.34(a)(3),(c)(1) and (2)], allow a generator to accumulate up to 55 gallons of hazardous waste generated on-site provided the waste is accumulated at or near the point of generation and the containers are marked with the word "hazardous waste" or other words identifying the contents of the containers and the containers are always closed during storage.

84. Respondent's failure to properly label tanks and containers containing hazardous wastes and its failure to properly store and accumulate hazardous wastes in satellite areas as alleged in this Count 3 violated OAC § 3745-52-34(A)(3), [40 C.F.R. § 262.34(a)(3)], and OAC

§ 3745-52-34(C)(1) and (2), [40 C.F.R. § 262.34(c)(1) and (2)]. Additionally, these actions and inactions combined with Respondent's failure to apply for or have a permit also resulted in Respondent violating OAC §§ 3745-50-45(A), 3745-50-41(A) and (D), [40 C.F.R. §§ 270.1(c) and 270.10(a) and (d)].

85. The Respondent has corrected the violations alleged in this Count 3 and certifies that it is in compliance with these requirements.

Count 4

Failure to Comply with Training Requirements

86. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

87. Pursuant to OAC § 3745-52-34(A)(4), [40 C.F.R. § 262.34(a)(4)], and OAC §§ 3745-65-16(C) and (D), [40 C.F.R. § 265.16(C) and (D)], a generator may, for ninety days or less, accumulate or conduct treatment of hazardous waste that is generated on-site without an Ohio hazardous waste permit, provided the generator conducts annual training reviews for its employees and retains records of that training.

88. At the time of the inspection, the Respondent did not provide the annual training reviews to two of its employees and did not have a record of the job titles, job descriptions, and type and amount of training required for employees in positions of hazardous waste management for calendar years 2014 and 2015.

89. At the time of the inspection and subsequently, the Respondent did not have and had not applied for a hazardous waste permit pursuant to OAC §§ 3745-50-45(A), 3745-50-41(A) and (D), [40 C.F.R. §§ 270.1(c); and 270.10(a)].

90. Respondent's failure to provide training and retain records as alleged in this Count 4

violated OAC § 3745-52-34(A)(4), [40 C.F.R. § 262.34(a)(4)], and OAC §§ 3745-65-16(C) and (D), [40 C.F.R. § 265.16(C) and (D)]. Additionally, Respondent's failure to comply with the training requirements as alleged in this Count 4 and its failure to apply for or have a permit also resulted in the Respondent violating OAC § 3745-50-45(A), §§ 3745-50-41(A) and (D), [40 C.F.R. §§ 270.10(c) and 270.10(a) and (d)].

91. The Respondent has corrected the violations alleged in this Count 4 and certifies that it is in compliance with these requirements.

Count 5

Failure to Conduct and Document Waste Determination

92. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

93. OAC § 3745-52-11, [40 C.F.R. § 262.11], requires any person who generates a "waste" to determine if that waste is a hazardous waste.

94. OAC § 3745-52-40(C), [40 C.F.R. § 262.40(c)], requires a generator to retain documentation of the waste determination required by paragraph 93 above for three years after the date the waste was last sent for on-site or off-site storage, treatment or disposal.

95. During the inspection of the Centerless Polisher Dust area, there was one 55-gallon drum that was not labeled and was closed. The centerless polisher dust waste stream was in the drum and had not been disposed of and that there was no waste profile for it.

96. During the inspection of the Small Blast Area of the Mold Shop, there was one 55-gallon drum that was not labeled and was closed. The polishing dust waste stream in the drum had never been disposed of and that there was no waste profile for it.

97. Respondent failed to make the waste determination and document that determination for the wastes as alleged in this Count 5 in violation of OAC §§ 3745-52-11 and 3745-52-40(C), [40 C.F.R. §§ 262.11 and 262.40(c)].

98. The Respondent has corrected the violations alleged in this Count 5 and certifies that it is in compliance with these requirements.

Count 6

Failure to Timely File Biennial Report

99. Complainant incorporates paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

100. OAC §§ 3745-52-41(A) and (B), [40 C.F.R. §§ 262.41(a) and (b)], require a generator who ships any hazardous waste off-site to prepare and submit to Ohio EPA the "Comprehensive Biennial Report" by March first of each even numbered year.

101. Respondent was required to submit a Comprehensive Biennial Report for calendar year 2015 to Ohio EPA by March 1, 2016. It did not submit the 2015 Comprehensive Biennial Report to Ohio EPA until April 1, 2016. It was required to submit a Comprehensive Biennial Report for calendar year 2013 to Ohio EPA by March 1, 2014. It did not submit the 2013 Comprehensive Biennial Report to Ohio EPA until March 4, 2014.

102. Respondent's failure to submit its Comprehensive Biennial Reports as alleged in this Count 6 violated OAC §§ 3745-52-41(A) and (B), [40 C.F.R. §§ 262.41(a) and (b)].

103. The Respondent has corrected the violations alleged in this Count 6 and certifies that it is in compliance with these requirements.

Civil Penalty

104. 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 $95,242. In determining the penalty amount, Complainant considered EPA's RCRA Civil Penalty Policy, dated June 23, 2003, the seriousness of the violations and Respondent's good faith efforts to comply with the applicable requirements and cooperation in resolving this matter.

105. Respondent agrees to pay this amount within 30 days after the effective date of this CAFO. Alternately, Respondent may pay this amount, plus interest, in three installments as set forth as follows: an initial payment of $31,750.00 thirty (30) days after the effective date of the CAFO, a second payment of $31,750 sixty (60) days thereafter, and a third payment of $31,742 sixty (60) days thereafter. Respondent must pay by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must state "In re: Hale Performance Coatings, Inc." and the docket number of this CAFO.

106. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Bryan Gangwisch (ECR-17J)
Land and Chemicals Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Richard J. Clarizio (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

108. 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.

109. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue and is due 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 in addition to interest for 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

110. Respondent certifies that it is fully complying with applicable requirements of RCRA, 42 U.S.C. §§ 6901-6992k, and the federally authorized Ohio hazardous waste program in Ohio Admin. Code Chapters 3745-50 – 3745-279 (40 C.F.R. Parts 260 – 279).

111. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: clarizio.richard@epa.gov (for Complainant), and dhaynam@shumaker.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

113. 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.

114. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

115. 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).

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

117. 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.

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

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

In the Matter of:
Hale Performance Coatings, Inc.
Docket No. RCRA-05-2020-0008

United States Environmental Protection Agency, Complainant

02/21/2020
Date

Michael D. Harris
Michael D. Harris
~~Acting~~ Division Director
Enforcement and Compliance Assurance Division

In the Matter of:
Hale Performance Coatings, Inc.
Docket No. **RCRA-05-2020-0008**

Hale Performance Coatings, Inc., Respondent

1-29-2020
Date

Mike Deye
President
Hale Performance Coatings, Inc.

In the Matter of:
Hale Performance Coatings, Inc.
Docket No. **RCRA-05-2020-0008**

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.

2/28/2020
Date

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

Consent Agreement and Final Order
In the Matter of: Hale Performance Coatings, Inc.
Docket No. RCRA-05-2020-0008

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [**RCRA-05-2020-0008**], which was filed on 2/28/2020, in the following manner to the following addressees:

Copy by E-mail to Respondent:	Hale Performance Coatings, Inc.
Copy by E-mail to Attorney for Complainant:	Richard Clarizio clarizio.richard@epa.gov
Copy by E-mail to Attorney for Respondent:	Douglas Haynam dhaynam@shumaker.com
Copy by E-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: February 28, 2020

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5