



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAR 21 2019

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**Article Number: 7018 2290 0000 4961 3103**

Michael S. McMahon, Esq.  
McMahon DeGulis LLP  
812 Huron Road, Suite 650  
Cleveland, Ohio 44115

Re: In the Matter of Kop-Coat, Inc.  
Docket No. EPCRA-02-2019-4103

Dear Mr. McMahon:

Enclosed is a fully executed Consent Agreement and Final Order ("CA/FO") that resolves the above referenced matter. Please note that payment of the civil penalty assessed shall be made in accordance with the terms of the CA/FO.

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Sincerely,

Karen L. Taylor, Esq.  
Office of Regional Counsel  
Waste and Toxic Substance Branch

Enclosure

cc: Karen Maples, Regional Hearing Clerk

U.S. Environmental Protection Agency  
2019 MAR 21 AM 8:00  
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency Reg 2  
2019 MAR 21 AM 8:00  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
 :  
Kop-Coat, Inc., :  
 :  
Respondent. : **CONSENT AGREEMENT/FINAL ORDER**  
 : Docket No. EPCRA-02-2019-4103  
 :  
 :  
Proceeding under Section 325(c) :  
of Title III of the Superfund :  
Amendments and Reauthorization Act :  
-----X

**PRELIMINARY STATEMENT**

This civil administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq. (also known as the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA” or “the Act”)). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA”). Pursuant to Section 22.13(b) of Title 40 of the Code of Federal Regulations (“C.F.R.”) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (“CROP”), where the parties agree to settlement of causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a

Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) & (3). This administrative proceeding is being simultaneously commenced and concluded pursuant to said provisions.

Complainant and Respondent agree that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) & (3) of the CROP, is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been judicially or administratively adjudicated.

#### **EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Kop-Coat, Inc., a corporation organized pursuant to the laws of the State of Ohio.
2. Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 372.3.
3. Respondent is, and was at all times relevant, an owner and/or operator of a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3, located at 36 Pine Street, Rockaway, New Jersey 07866 (hereinafter the “Facility”). The Facility is classified by North American Industry Classification System (NAICS) Code 325510 (Paint and Coating Manufacturing).
4. At the Facility, Respondent:
  - a. employs, and has employed at all times relevant, more than 10 employees;
  - b. operates an establishment that is in a Standard Industrial Classification major group or industry code listed in 40 C.F.R. § 372.23(a), for which the corresponding NAICS Code subsector and industry codes are listed in 40 C.F.R. § 372.23(b); and
  - c. processes, and at all times relevant processed, in amounts over the applicable reporting threshold of 25,000 pounds, the following listed (40 C.F.R. §



372.65) toxic chemicals: copper compounds, zinc compounds, xylenes, 1,2,4-trimethylbenzene and certain glycol ethers.

5. As a consequence of its activities at the Facility, Respondent is, and was during all times relevant, subject to the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereto and set forth at 40 C.F.R. Part 372.

6. Specifically, pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.22 and 372.30, owners or operators of a facility subject to the requirements of Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 are required to submit annually, no later than July 1<sup>st</sup> of each year, accurate reports for each toxic chemical (defined under 40 C.F.R. § 372.3 to include a chemical listed in 40 C.F.R. § 372.65) that was “manufactured,” “processed” or “otherwise used” (each such term defined in 40 C.F.R. § 372.3) during the preceding calendar year in quantities exceeding the established toxic chemical threshold levels as listed in 40 C.F.R. § 372.25, 372.27 or 372.28. The information, to be reported on the prescribed EPA form (40 C.F.R. § 372.30(a); hereinafter “Form R” or “Form A”) must be submitted to the Administrator of EPA and the state in which the toxic chemicals were manufactured, processed or otherwise used.

7. For calendar year 2015, Respondent was required to file an accurate and complete Form R or A report by July 1, 2016 for each of the following toxic chemicals processed at the Facility: copper compounds, zinc compounds, xylenes, 1,2,4-trimethylbenzene and certain glycol ethers. Respondent filed the required 2015 Form R reports in 2017.

8. For calendar year 2014, the Respondent was required to file an accurate and complete Form R or A report by July 1, 2015 for each of the following toxic chemicals processed at the Facility: copper compounds, zinc compounds, xylenes and 1,2,4-trimethylbenzene. Respondent filed the required 2014 Form R reports in 2017.

9. For calendar year 2013, Respondent was required to file an accurate and complete Form R or A by July 1, 2014 report for each of the following toxic chemicals processed at the Facility: copper compounds, zinc compounds, xylenes and 1,2,4-trimethylbenzene. Respondent filed the required 2013 Form R reports in 2017.

10. For calendar year 2015, Respondent under-reported stack air and off-site transfers for copper compounds, zinc compounds and xylenes in March 2017. Corrected reports were submitted in June 2017.

11. For calendar year 2014, Respondent under-reported stack air and off-site transfers for copper compounds, zinc compounds and xylenes in March 2017. Corrected reports were submitted in June 2017.

12. As set out in paragraphs 7-11 above, Respondent failed, in a timely manner, to submit to the Administrator and to the State of New York, a complete and correct Form R or A for each of the above-described toxic chemicals processed at the Facility in quantities exceeding the reporting threshold, in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

13. Each of Respondent's failures to timely submit a complete and correct Form R or A for each of the above-described toxic chemicals constitutes a separate violation for which Respondent is liable to the United States pursuant to Sections 325(c)(1) & (3) of EPCRA, 42 U.S.C. §§ 11045(c)(1)(3).

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 22.18 of the CROP, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the



merits, knowingly and voluntarily: (a) admits that EPA has jurisdiction under EPCRA to enforce the provisions of the Act and the regulations promulgated thereunder; (b) neither admits nor denies specific factual allegations contained in EPA's Findings of Fact; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions.

1. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is now in full compliance with the provisions and statutory requirements of EPCRA that are applicable to Respondent's activities relating to EPCRA's Toxic Chemical Release reporting requirements.

2. Respondent shall pay a civil penalty to EPA in the total amount of **ONE HUNDRED FIFTY-FOUR THOUSAND TWO HUNDRED TWENTY DOLLARS (\$154,220)**. Such payment shall be made by cashier's or certified check or electronically by Fedwire. If payment is made by check, then the check shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: *In the Matter of Kop-Coat, Inc.*, and shall bear thereon the **Docket No. EPCRA-02-2019-4103**. If Respondent chooses to make payment by Fedwire, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment,
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045,**
- 3) Account Code for Federal Reserve Bank of New York receiving payment: **68010727,**
- 4) Federal Reserve Bank of New York ABA routing number: **021030004,**
- 5) Field Tag 4200 of the Fedwire message should read **D 68010727**  
Environmental Protection Agency,
- 6) Name of Respondent: **Kop-Coat, Inc.,** and
- 7) Case Number: **EPCRA-02-2019-4103.**

3. The payment of One Hundred Fifty-Four Thousand Two Hundred Twenty Dollars (\$154,220) shall be received (if made by check) or effected (if implemented electronically) on or before thirty (30) calendar days from the date of the signature of the Final Order, which is located at the end of this CA/FO. (The date by which each payment must be received shall hereinafter be referred to as the “due date.”)

- a. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if payment is not made on or before the due date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

4. The civil penalty (including any payment of interest or late payment handling charge that comes due) herein constitutes a “penalty” within the meaning of 26 U.S.C. § 162(f), and is not a deductible expenditure for purposes of federal or state law.

5. Complainant shall mail to Respondent (to the representative designated in Paragraph 7, below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.

6. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

John Gorman, Chief  
Pesticides and Toxic Substances Branch  
US Environmental Protection Agency  
2890 Woodbridge Avenue (MS-225)  
Edison, NJ 08837

and

Karen L. Taylor, Esq.  
Office of Regional Counsel  
US Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007

EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address.



President, Pettit Marine Paint Division  
Kop-Coat Inc.  
36 Pine Street  
Rockaway, NJ 07866

and

Michael S McMahan  
McMahon DeGulis LLP  
Suite 650  
812 Huron Road  
Cleveland, Ohio 44115

7. Full payment of the penalty described in Paragraph 3, above, shall only resolve Respondent's liability for federal civil penalties for the violations and facts described in Paragraphs 7-13 in the above Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

8. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder or with any applicable federal, state, or local rules, regulations, and laws. Nothing in this document is intended nor shall be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.

9. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.

10. This Consent Agreement and any provision herein shall not be construed as an admission of any fact or of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

11. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent, in entering this Consent Agreement, waives any right it might possess to seek or obtain judicial review under EPCRA, the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, or other law that might be applicable. Respondent, in entering into this Consent Agreement, waives any right it might have under Section 325 of EPCRA, 42 U.S.C. § 11045, or other applicable law otherwise to seek or obtain an administrative or judicial hearing on the claims set forth in or arising from the “Findings of Fact” and/or the “Conclusions of Law” sections of this document, and on the terms and conditions set forth in the “Agreement on Consent” section of this Consent Agreement.

12. This Consent Agreement, and any provision herein, shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce any of the requirements or provisions of this Consent Agreement and accompanying Final Order.

13. Compliance with the requirements and provisions of this Consent Agreement shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of EPCRA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

14. The signatory for the Respondent certifies that: (a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and (b) he or she is duly and fully authorized

to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

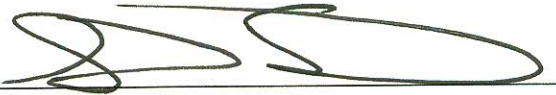
15. Each party hereto shall bear its own costs and fees in this matter.

16. Pursuant to 40 C.F.R. § 22.31(b), the Effective Date of the Consent Agreement and Final Order herein shall be the date when the Final Order is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.



**In the Matter of Kop-Coat, Inc.**  
**Docket No. EPCRA-02-2019-4103**

RESPONDENT: **KOP-COAT, INC.**

BY:   
\_\_\_\_\_  
Authorizing Signature

NAME: Scott Townsend  
(PLEASE PRINT)

TITLE: President

DATE: 2/28/19

COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

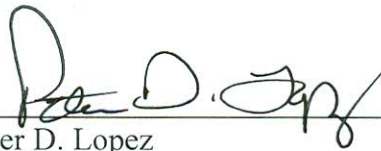
  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, NY 10007-1866

**MAR 12 2019**  
DATE: \_\_\_\_\_

**In the Matter of Kop-Coat, Inc.**  
**Docket No. EPCRA-02-2019-4103**

**FINAL ORDER**

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Kop-Coat, Inc.*, Docket No. EPCRA-02-2019-4103. The Consent Agreement, agreed to and entered into by the parties to this matter, is hereby ratified, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, NY. 40 C.F.R. § 22.31(b).



\_\_\_\_\_  
Peter D. Lopez  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

DATE: 3/18/19

**In the Matter of Kop-Coat, Inc.**  
**Docket No. EPCRA-02-2019-4103**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy  
By Hand:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16th floor  
New York, NY 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Michael S. McMahon, Esq.  
Attorney for Respondent  
McMahon DeGulis LLP  
812 Huron Road, Suite 650  
Cleveland, OH 44115

Date: March 21, 2019  
New York, NY

A handwritten signature in black ink, appearing to read "Michael S. McMahon", written over a horizontal line.