

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Indmar Coatings Corporation	:	
	:	
Respondent.	:	EPA Docket No. RCRA-03-2017-0122
	:	
Indmar Coatings Corporation	:	
317 West Main Street	:	
Wakefield, Virginia 23888,	:	
	:	
Facility.	:	Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6928(a)
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CONSENT AGREEMENT AND COMPLIANCE ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA,” “Agency” or “Complainant”) and Indmar Coatings Corporation (“Respondent”) pursuant to Sections 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. This Consent Agreement (“CA”) and the accompanying Final Order (“FO”) (hereinafter jointly referred to as this “CAFO”) address alleged violations by Respondent of RCRA and the federally authorized Virginia Hazardous Waste Management Regulations (“VHWMR”), codified at 9 VAC 20-60-12 *et. seq.*

3. The Commonwealth of Virginia has received federal authorization to administer a Hazardous Waste Management Program (the “Virginia Hazardous Waste Management Program”) in lieu of the federal hazardous waste management program authorized under RCRA Subtitle C, 42 U.S.C. §§6921 – 6939(g). Effective December 18, 1984, the VHWMR was authorized by the EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A and thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). *See 65 Fed. Reg. 46606 (July 31, 2000)*), June 20, 2003 (*see 68 Fed. Reg. 36925 (June 20, 2003)*), July 10, 2006 (*see 71 Fed. Reg. 27216 (May 10, 2006)*) July 30, 2008 (*see 73 Fed. Reg. 44168 (July 30, 2008)*) and in part on November 4, 2013 with revisions not applicable here, (*see 78 Fed. Reg. 54178*). The VHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 2010 Code of Federal Regulations by reference.
4. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), this CAFO simultaneously commences and concludes an administrative proceeding against Respondent, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), to resolve alleged violations of RCRA at Respondent’s facility located at 317 West Main Street, Wakefield, Virginia, 23888.
5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA.
6. For purposes of this proceeding only, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 5, above.
7. For the purposes of this proceeding only, Respondent agrees not to contest EPA’s jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
10. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

Notice of Action to the Commonwealth of Virginia

11. EPA has given the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (“VADEQ”), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

12. Upon making a determination that any person has violated or is in violation of any requirement of RCRA Subtitle C, and upon satisfying the notification requirements of RCRA Section 3008(a)(2), 42 U.S.C. Section 6928(a)(2), RCRA Section 3008(a)(1), 42 U.S.C. Section 6928(a)(1), authorizes the Administrator of EPA to issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

13. Respondent is, and was at the time of the violations alleged herein, a corporation of the Commonwealth of Virginia.
14. Respondent is, and at the time of the violations alleged herein, a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903, 9 VAC 20-60-260.A.
15. Respondent is, and at all times relevant to this Consent Agreement was, the “owner” and “operator” of a “facility,” described in paragraph 16, below, 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.
16. The facility referred to in Paragraph 15, above, including all of its associated equipment and structures (hereinafter the “Facility”), is a paint manufacturing facility located at 317 West Main Street, Wakefield, Virginia, 23888.
17. At the time of the allegations alleged herein, Respondent generated more than 100 but less than 1,000 kilograms of hazardous waste per month at its Facility. Respondent is assigned EPA ID No. VAR000508614.
18. Respondent is and, at all times relevant to this CAFO has been, a “generator” of, and has engaged in the “storage” 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 in 9 VAC 20-60-260.A.
19. On April 19 and 20, 2016, representatives of EPA and the VADEQ conducted an EPA Compliance Inspection at Respondent’s Facility (“2016 CEI”).
20. On September 30, 2014, representatives of EPA and the VADEQ conducted an EPA Compliance Inspection at Respondent’s Facility (“2014 CEI”).
21. Respondent generates paint waste at the Facility which is a hazardous waste (EPA Hazardous Waste Nos. D001, D035, F002 and F005) within the meaning of 9 VAC 20-60-261.A, which incorporates by reference 40 C.F.R. §§ 261.22, 261.24, and 261.31, because it exhibits the characteristic of ignitability and toxicity.

22. From at least September 30, 2014 through April 20, 2016, the hazardous waste described in Paragraph 21, above, was in “storage” in containers at the Facility.

COUNT I
(Waste Determination)

23. The preceding paragraphs are incorporated by reference.
24. 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein, provides that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste using the following methods:
- (a) He should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4.
 - (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 C.F.R. Part 261.
 - (c) For purposes of compliance with 40 C.F.R. Part 268, or if the waste is not listed in subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in subpart C of 40 C.F.R. Part 261 by either:
 - (1) Testing the waste according to the methods set forth in subpart C of 40 C.F.R. Part 261, or according to an equivalent method approved by the Administrator under 40 C.F.R. § 260.21; or
 - (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.
25. At the time of the 2014 and 2016 CEIs, Respondent had failed to conduct hazardous waste determinations on: 1) pallets of rusting paint containers located outside of the Facility; 2) rusting, leaking, and unlabeled containers located inside a shipping container at the Facility; 3) aerosol cans disposed in the regular trash at the facility; 4) six 55-gallon containers located outside of the Facility; and, 5) rusted, leaking, and unlabeled containers located in the Facility warehouse.
26. The wastes referred to in Paragraph 25 above, are and were at the time of the alleged violations “solid wastes” as this term is defined in 9 VAC 20-60-261.A, which incorporates by reference 40 C.F.R. § 261.2, with exceptions not relevant here.
27. From at least September 30, 2014 until April 20, 2016, Respondent violated 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.11, by failing to conduct hazardous waste determinations on solid waste generated at the Facility.

COUNT II

(Operating Without Qualifying for a Permit Exemption or Obtaining Interim Status or a Permit)

28. The preceding paragraphs are incorporated by reference.
29. 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), 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.
30. Respondent does not have, and never had, a hazardous waste treatment or storage permit or interim status pursuant to 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for the treatment or storage of hazardous waste at the Facility.
31. Pursuant to 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(2) with exceptions not relevant herein, a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that, among other things, the generator complies with 40 C.F.R. § 265.171 which requires that if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from such container to a container that is in good condition, or manage the waste in some other way that complies with RCRA regulations.
32. Pursuant to 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(2) with exceptions not relevant herein, a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that, among other things, the generator complies with the 40 C.F.R. § 265.174, which requires that at least weekly, the owner or operator of a facility must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.
33. Pursuant to 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(4) with exceptions not relevant herein, a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with 40 C.F.R. § 262.34(a)(2), which requires that each hazardous waste storage container be marked with the date upon which each period of accumulation begins and such accumulation date is clearly marked and visible for inspection on each container.

34. Pursuant to 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(4) with exceptions not relevant herein, a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with 40 C.F.R. § 262.34(a)(3) which requires that while being accumulated on-site, each container of hazardous waste is labeled or marked clearly with the words, "Hazardous Waste."
35. Pursuant to 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(5)(iii) with exceptions not relevant herein, a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with 40 C.F.R. § 262.34(d)(5)(iii) which requires that the generator ensure that all employees at a facility are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.
36. Pursuant to 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(e) with exceptions not relevant herein, a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of 40 C.F.R. § 262.34(d).
37. 9 VAC 20-60-262 which incorporates by reference 40 C.F.R. § 262.34(c) 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 satellite container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste and, (ii) complies with 40 C.F.R. § 262.34(c)(1)(ii), which requires the generator to mark satellite containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.
38. From at least September 30, 2014 through April 20, 2016, Respondent accumulated D001, D035, F002 and F005 hazardous paint waste in containers that were not in good condition, without transferring the hazardous waste from such containers to containers in good condition, or without managing the waste in some other way that complies with RCRA regulations as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(2) with exceptions not relevant herein which references 40 C.F.R. § 265.171.

39. From at least September 30, 2014 through April 20, 2016 Respondent accumulated D001, D035, F002 and F005 hazardous paint waste in containers but did not inspect areas where such containers were stored and did not conduct inspections looking for leaking containers and for deterioration of containers caused by corrosion or other factors as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(2) with exceptions not relevant herein which references 40 C.F.R. § 265.174.
40. At the time of the 2014 CEI, Respondent accumulated six 55-gallon containers of D001, D035, F002 and F005 hazardous paint waste in the Facility hazardous waste storage area that were not labeled with accumulation start dates as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(4) with exceptions not relevant herein, which references 40 C.F.R. § 262.34(a)(2).
41. At the time of the 2016 CEI, Respondent accumulated five 55-gallon containers of D001, D035, F002 and F005 hazardous paint waste in the Facility hazardous waste storage area that were not labeled with accumulation start dates as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(4) with exceptions not relevant herein, which references 40 C.F.R. § 262.34(a)(2).
42. At the time of the 2016 CEI, Respondent accumulated containers of D001, D035, F002 and F005 hazardous paint waste in a shipping container at the Facility and in the Facility warehouse that were not labeled with accumulation start dates as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(4) with exceptions not relevant herein, which references 40 C.F.R. § 262.34(a)(2).
43. At the time of the 2014 CEI, Respondent accumulated a 55-gallon container of D001, D035, F002 and F005 hazardous paint waste in the Facility hazardous waste storage area that was not labeled with the words "Hazardous Waste" as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(4) which references 40 C.F.R. § 262.34(a)(3).
44. At the time of the 2016 CEI, Respondent accumulated a 55-gallon container of D001, D035, F002 and F005 hazardous paint waste in the Facility hazardous waste storage area that was not labeled with the words "Hazardous Waste" as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(4) which references 40 C.F.R. § 262.34(a)(3).
45. At the time of the 2016 CEI, Respondent accumulated containers of D001, D035, F002 and F005 hazardous paint waste in a shipping container at the Facility and in the Facility warehouse that were not labeled with the words "Hazardous Waste" as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(4) which references 40 C.F.R. § 262.34(a)(3).

46. From at least September 30, 2014 through April 20, 2016 Respondent accumulated D001, D035, F002 and F005 hazardous paint waste at the Facility without ensuring that all employees at a facility are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d)(5)(iii) with exceptions not relevant herein.
47. At the time of the 2014 CEI, Respondent accumulated D001, D035, F002 and F005 hazardous paint waste in a five-gallon satellite container that was not labeled with the words "Hazardous Waste" or other with other words that identify the contents of the containers, as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(c)(1)(ii).
48. At the time of the 2014 CEI, Respondent accumulated D001, D035, F002 and F005 hazardous paint waste in a five-gallon satellite container that was not kept closed except when necessary to add or remove waste as required by 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(c)(1)(iii), which references 40 C.F.R. § 265.173(a).
49. Pursuant to 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(f) with exceptions not relevant herein, a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264, 265 and 267, and the permit requirements of 40 C.F.R. Part 270 unless he has been granted an extension to the 180-day (or 270-day if applicable) period.
50. From at least September 30, 2014 through April 20, 2016 Respondent accumulated D001, D035, F002 and F005 hazardous paint waste at the Facility for a period of greater than 270 days in violation of 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(e).
51. At the time of the 2016 CEI, Respondent had accumulated more than 6000 kilograms of D001, D035, F002 and F005 hazardous paint waste at the Facility.
52. Respondent has not been granted an extension of the of the 180-day period (or 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) pursuant to 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(f) with exceptions not relevant herein.

53. Respondent failed to qualify for the “less than 180-day” generator accumulation exemption of to 9 VAC 20-60-262.A which incorporates by reference 40 C.F.R. § 262.34(d) with exceptions not relevant herein, by failing to satisfy the conditions for such exemptions referred to in Paragraphs 31 - 37, above, and as described in Paragraphs 38 – 48, above.
54. Respondent’s Facility is a hazardous waste treatment, storage or disposal “facility” as that term is defined in 9 VAC 20-60-260.A which incorporates by reference 40 C.F.R. § 260.10 with respect to the storage of hazardous waste as described above.
55. Respondent was required by 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for the hazardous waste storage activities described in this count.
56. From at least September 30, 2014 through April 20, 2016, Respondent violated 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit, interim status or a valid exemption to the permit requirement.

COUNT III

(Equipment Deterioration or Malfunction)

57. The preceding paragraphs are incorporated by reference.
58. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.15(a) requires the facility owner or operator to inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing—or may lead to—(1) release of hazardous waste constituents to the environment or (2) a threat to human health.
59. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.15(c) with exceptions not relevant herein, requires the owner of operator to remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard.
60. At the time of the 2014 CEI, at least two hazardous waste manifests on file at the Facility indicated the Facility had offered for transport and disposal six drums of hazardous waste that were rejected by the transporter because the drums were in bad condition, leaking, or caked in product.
61. At the time of the 2014 CEI, two 55-gallon drums of hazardous waste located in the facility hazardous waste accumulation area were bulging.
62. At the time of the 2016 CEI, numerous containers of hazardous waste located throughout the Facility and inside a shipping container at the Facility were leaking, rusting and in poor condition.

63. At the time of the 2016 CEI, the Facility inspection log indicated containers of hazardous waste were damaged but did not indicate such containers had been repaired or replaced.
64. From at least September 30, 2014 through April 20, 2016, Respondent violated 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.15(a) and (c) by failing to inspect the Facility for malfunctions and deterioration, and by failing to remedy any deterioration or malfunction of equipment or structures which its inspections revealed on a schedule which ensures that the problem does not lead to an environmental or human health hazard.

COUNT IV
(Training)

65. The preceding paragraphs are incorporated by reference.
66. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.16(a)(1), requires facility personnel to successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 264. The owner or operator must ensure that this program includes all the elements described in the document required under 40 C.F.R. § 264.16(d)(3).
67. At the time of the 2016, Respondent failed to have Facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 264.
68. At the time of the 2016 CEI, Respondent had not documented that RCRA training had been given to, and completed by, facility personnel.
69. On April 20, 2016, Respondent violated 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.16(a)(1) and 40 C.F.R. § 264.16(d)(4), by failing to have facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 264, and by failing to document RCRA training had has been given to, and completed by, facility personnel.

COUNT V

(Operation of the Facility to Minimize the Possibility of a Release)

70. The preceding paragraphs are incorporated by reference.
71. Pursuant to 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.31 with exceptions not relevant herein, facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
72. From at least September 30, 2014 through April 20, 2016, Respondent stored D001, D035, F002 and F005 hazardous paint waste inside, outside and in a shipping container at the Facility in containers that were leaking, rusting, and bulging.
73. At the time of the 2016 CEI, a drum of hazardous waste solvent had been inverted and had spilled onto the Facility warehouse floor.
74. From at least September 30, 2014 through April 20, 2016, Respondent violated 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.31 with exceptions not relevant herein, by failing to maintain and operate the Facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

COUNT VI

(Transfer of Hazardous Waste from Containers in Poor Condition)

75. The preceding paragraphs are incorporated by reference.
76. 9 VAC 20-60-264.A which incorporates by reference 40 C.F.R § 264.171 with exceptions not relevant herein, provides that if a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of 40 C.F.R. Part 264.
77. From at least September 30, 2014 through April 20, 2016, Respondent stored D001, D035, F002 and F005 hazardous paint waste at the inside, outside and in a shipping container at the Facility in containers that were leaking, rusting, and bulging without transferring the hazardous waste to containers in good condition, or managing the waste in some other way that complies with the requirements of 40 C.F.R. Part 264.

78. From at least September 30, 2014 through April 20, 2016, Respondent violated 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.171 by failing to transfer hazardous waste being stored in containers that were leaking, rusting, and bulging to containers in good condition, or managing the waste in some other way that complies with the requirements of 40 C.F.R. Part 264.

COUNT VII
(Weekly Inspections)

79. The preceding paragraphs are incorporated by reference.
80. Pursuant to 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.174 with exceptions not relevant herein, the owner or operator of a hazardous waste facility is required to inspect areas where containers of hazardous waste are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion and other factors.
81. From at least September 30, 2014 through April 20, 2016, the Facility weekly inspection logs did not include areas of the Facility where hazardous waste containers were stored.
82. From at least September 30, 2014 through April 20, 2016, the Facility weekly inspection log failed to identify bulging hazardous waste containers, and unlabeled and undated hazardous waste containers and the length of time hazardous waste containers had been stored.
83. From at least September 30, 2014 through April 20, 2016, Respondent violated to 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.174 with exceptions not relevant herein, by failing inspect weekly all areas of the Facility where containers of hazardous waste were stored, and by failing to inspect for leaks and for deterioration of containers caused by corrosion and other factors.

COUNT VIII
(Identification Number)

84. The preceding paragraphs are incorporated by reference.
85. Pursuant to 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.12(a), with exceptions not relevant herein, a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the VADEQ Director.

86. 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.20(a) with exceptions not relevant herein provides that a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, must prepare a manifest on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to 40 C.F.R. Part 262. The manifest must include the generator's EPA identification number and the address of the Facility where the hazardous waste is generated, pursuant to the Appendix to 40 C.F.R. Part 262.
87. At the time of the 2016 CEI, Respondent sent hazardous waste off site for disposal which had been generated at the Facility, located at 317 W. Main Street, Wakefield, Virginia, using an EPA identification number assigned to a related facility located at 237 W. Main Street, Wakefield, Virginia.
88. On April 20, 2016, Respondent violated 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.20(a) with exceptions not relevant herein by sending hazardous waste off-site for disposal under manifests reciting the incorrect EPA identification number and incorrect address from which the hazardous waste had been generated.

III. COMPLIANCE ORDER

89. Respondent shall perform the following Compliance Tasks set forth in this Section within the time specified. Respondent shall certify completion of such Compliance Tasks set forth in Paragraphs 90 - 93 in accordance with Paragraph 94, below, no later than 180 days after Respondent's receipt of the fully executed CAFO. "Days" as used herein shall mean calendar days unless specified otherwise.
90. Within ninety (90) days of Respondent's receipt of the fully executed CAFO, all hazardous waste material being stored at the Facility shall be the shipped offsite for treatment or and or disposal pursuant to the manifest requirements of 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.32. Within fifteen (15) days of such shipment(s) Respondent shall forward to EPA at the address listed in Paragraph 94, copies of the manifests showing such shipments have taken place.
91. Within 120 days of Respondent's receipt of the fully executed CAFO, Respondent shall forward to EPA at the address set forth in Paragraph 94, below, the Facility Standards of Procedure (SOPs) for compliance with the following RCRA requirements:
 - a. Labeling containers of hazardous waste with accumulation start dates, as set forth in 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.34(a)(2);
 - b. Ensuring that hazardous waste is not accumulated on site for a period greater than ninety (90) days; as set forth in 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.34(a);

- c. Conducting weekly inspections of areas where hazardous waste is stored, as set forth in 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.174;
 - d. Conducting annual refresher training for employees whose duties included the management of hazardous waste as required by 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.16(b); and
 - e. Transferring hazardous waste to containers in good condition, or managing the waste in some other way that complies with the requirements of 40 C.F.R. Part 264 when a container of being used to store hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak.
92. Within thirty (30) days of Respondent's receipt of the fully executed CAFO, and every ninety days thereafter until two years after the effective date of this CAFO, Respondent shall make hazardous waste determinations on all inventory at the Facility as provided by 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.11, and submit the written inventory and the accompanying determinations to EPA at the address set forth in Paragraph 94. Such inventory shall indicate: 1) whether the inventory item's "use-by" has date has expired; 2) whether the inventory item's container is rusted, leaking or damaged in any way; 3) whether the inventory item is properly labeled as to its contents.
93. Within sixty (60) days of Respondent's receipt of the fully executed CAFO, provide RCRA training as required by 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.16(a)(1) – (3) to Respondent's employees responsible for the management of hazardous waste from a third party provider. Within ninety (90) days of Respondent's receipt of the fully executed CAFO, provide documentation to EPA at the address set forth in Paragraph 94 below, documenting that this training has taken place.
94. Submissions to EPA: Any notice, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this Compliance Order shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The aforesaid certification shall provide the following statement above the signature of the responsible corporate officer signing the certification on behalf of the Respondent:

I certify under penalty of law that this document and all attachments are true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

Except as otherwise provided herein, notifications or submissions to EPA required by this Compliance Order shall be sent to the attention of:

Rebecca Serfass (3LC32)
Environmental Engineer
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029; and

Joyce A. Howell (3RC30)
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-202

IV. CIVIL PENALTIES

95. Respondent agrees to pay a civil penalty in the amount of **TWO THOUSAND DOLLARS (\$2,000.00)** in settlement of the alleged violations set forth in this CAFO, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of the executed and filed CAFO is mailed or hand-delivered to Respondent.

96. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including the penalty criteria 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 reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g). Complainant also has considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.
97. The Parties further acknowledge and represent that the aforesaid settlement is based, in part, upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by Respondent, as follows:
- a. Indmar Coatings Corporation, U.S. Income Tax Return for tax years 2013 - 2014;
 - b. Indmar Coatings Corporation, monthly bank statements for 2016;
 - c. Completed "Financial Statement of Corporate Debtor" form for Indmar Coating Corporation, signed by Wilmer Rowe, President, Indmar Coatings Corporation;
 - d. Documentation of IRS liens against Indmar Coatings Corporation.
98. In reliance upon the financial information identified in Paragraph 97, immediately above, and based upon an analysis of the same and in consideration of the penalty criteria set forth in EPA's RCRA Penalty Policy, which reflect the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), Complainant has concluded that Respondent has established that it is unable to pay a civil penalty in excess of the amount of **\$2,000.00** in settlement of the above-captioned action.
99. By the signature below, Respondent's representative certifies that the information submitted to EPA regarding Respondent's ability to pay and regarding any other matter at issue in this proceeding, is accurate and not misleading. Respondent and its officers, directors and principals are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding Respondent's claim of inability to pay, or regarding any of other matter herein at issue, are false or, in any material respect, inaccurate.

100. Payment of the civil penalty as required by Paragraph 95, above, and/or any accrued interest, administrative fees and/or late payment penalties, by 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 Docket Number of this action, *i.e.*, RCRA-03-2017-0122.

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 to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Craig Steffen 513-487-2091

D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
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 electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No.: 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"

F. 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: John Schmid 202-874-7026 or REX, 1-866-234-5681

G. On-Line Payment Option: WWW.PAY.GOV/PAYGOV

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

H. Point Of Contact regarding payment questions (i.e. how to make payment via wire, ACH, check, pay.gov):
Craig Steffen, 513-487-2091, steffen.craig@epa.gov

Additional payment guidance is available at:
<http://www2.epa.gov/financial/makepayment>.

101. At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or electronic transfer, as appropriate, to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

102. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

103. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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 as specified in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
104. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the 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).
105. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.
106. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly. A penalty charge of six percent per year will be assessed monthly on any portion of the 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 the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

V. RESERVATION OF RIGHTS

107. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including 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. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

RECEIVED
2017 JUN 14 PM 2:53
REGIONAL HEARING CLERK
EPA REGION III, PHILADELPHIA, PA

In the Matter of: :
: :
Indmar Coatings Corporation :
: :
Respondent. :
: :
Indmar Coatings Corporation :
317 West Main Street :
Wakefield, Virginia 23888, :
: :
Facility. :
: :
_____ :
: :

EPA Docket No. RCRA-03-2017-0122

Proceeding under Section 3008(a)
of the Resource Conservation and
Recovery Act, as amended, 42 U.S.C.
Section 6928(a)

CERTIFICATE OF SERVICE

I certify that I sent a copy of the Consent Agreement and Final Order to the addressee listed below. The original and one copy of the Complaint were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

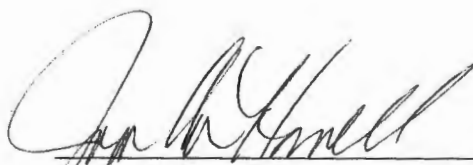
Via certified mail to:

Mr. B. Clay Chick
B. Clay Chick PLC
P.O. Box 1856
Norfolk, VA 23501

Via UPS, Next day delivery to:

Mr. Wilmer Rowe
IndMar Coatings Corporation
317 West Main Street
Wakefield, VA 23888

Dated: June 14, 2017



Joyce A. Howell
Senior Assistant Regional Counsel
U.S. EPA - Region III

VI. OTHER APPLICABLE LAWS

108. 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. PARTIES BOUND

109. This Consent Agreement and the accompanying Final Order 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 Consent Agreement and the accompanying Final Order.

VIII. EFFECTIVE DATE

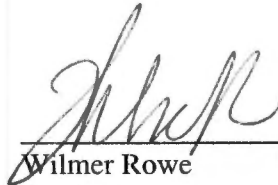
110. The effective date of this Consent Agreement and Final Order is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent, Indmar Coatings Corporation:

Date:

4/27/17

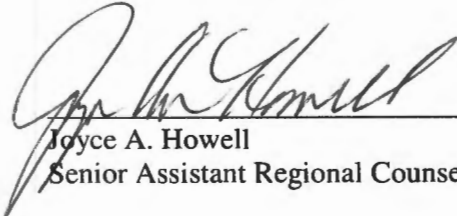
By:



Wilmer Rowe
President
Indmar Coatings Corporation

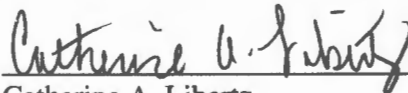
For Complainant, United States Environmental Protection Agency, Region III:

Date: 6-14-2017

By: 
Joyce A. Howell
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

6-14-17
Date

By: 
Catherine A. Libertz
Acting Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

Indmar Coatings Corporation

Respondent.

Indmar Coatings Corporation
317 West Main Street
Wakefield, Virginia 23888,

Facility.

EPA Docket No. RCRA-03-2017-0122

Proceeding under Section 3008(a)
of the Resource Conservation and
Recovery Act, as amended, 42 U.S.C.
Section 6928(a)

RECEIVED
2017 JUN 14 PM 2:53
REGIONAL OFFICE
EPA REGION III
PHILADELPHIA, PA

FINAL ORDER

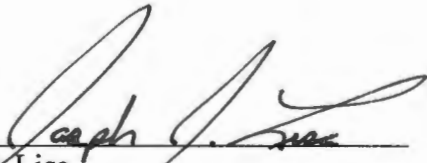
Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency - Region III, and Respondent, Indmar Coatings Corporation, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the Consolidated Rules of Practice and Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and

(g), IT IS HEREBY ORDERED that Respondent pay a civil penalty of **TWO THOUSAND DOLLARS (\$2,000.00)**, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

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

June 14, 2017
Date:



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