

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8 2012 JUN -5 AM 11:36

FILED EPA REGION 8 JUN 5 2012

IN THE MATTER OF:
Concrete Coatings, Inc.
1105 N 1600 W
Layton, UT 84041
Respondent

COMBINED COMPLAINT AND CONSENT AGREEMENT
DOCKET NO.: CAA-08-2012-0007

COMPLAINT

- 1. This civil administrative enforcement action is issued to Concrete Coatings, Inc. (Respondent) pursuant to section 113(a)(3)(B) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(a)(3)(B), for alleged violations of sections 111(e) and 183 of the CAA, 42 U.S.C. §§ 7411(e) and §7511b and the National Volatile Organic Compound (VOC) Emission Standards for Architectural Coatings at 40 C.F.R. part 59, subpart D (the Architectural Coatings Rule). This proceeding is subject to EPA's Consolidated Rule of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Rules of Practice), 40 C.F.R. part 22.
2. The undersigned EPA officials has been properly delegated the authority to issue this Combined Complaint and Consent Agreement (CCCA).
3. 40 C.F.R. § 22.13(b) provides that where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a CCCA.
4. The parties agree that the settling of 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.

5. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Respondent admits the jurisdictional allegations in this CCCA and neither admits nor denies all remaining allegations herein.

7. Respondent waives its right to a hearing before any tribunal to contest any issues of law or fact set forth in this CCCA.

STATUTORY AND REGULATORY FRAMEWORK

8. Section 183(e) of the Act, 42 U.S.C. § 7511b(e), authorizes U.S. EPA to promulgate regulations establishing requirements regarding the manufacture of certain consumer or commercial products, the use of which may result in the release of VOCs.

9. Pursuant to section 183(e) of the Act, 42 U.S.C. § 7511b(e), on September 11, 1998, U.S. EPA promulgated the National VOC Emission Standards for Architectural Coatings at 40 C.F.R. Part 59, Subpart D (the Architectural Coatings Rule).

10. The Architectural Coatings Rule applies to each “architectural coating,” as that term is defined at 40 C.F.R. § 59.401, manufactured on or after September 13, 1999, for sale or distribution in the United States.

11. The Architectural Coatings Rule, at 40 C.F.R. § 59.401, defines “manufacturer” as a person that produces, packages, or repackages architectural coatings for sale or distribution in the United States.

12. The Architectural Coatings Rule, at 40 C.F.R. § 59.402(a), requires each manufacturer of any architectural coating subject to the Architectural Coatings Rule to ensure that the VOC content of the coating does not exceed the applicable limit in Table 1 of the Architectural Coatings Rule (Table 1), except as provided in sections 59.403 and 59.404.

13. The Architectural Coatings Rule, at 40 C.F.R. § 59.403, states that each manufacturer of architectural coatings may exceed the applicable VOC content limit in Table 1 if the manufacturer pays an annual exceedance fee.

14. The Architectural Coatings Rule, at 40 C.F.R. § 59.408(d), states that each manufacturer of architectural coatings that uses the exceedance fee provisions of section 59.403 must submit the report and exceedance fee payment by March 1 following the calendar year in which the coating was manufactured.

15. The Architectural Coatings Rule, at 40 C.F.R. § 59.404, states that each manufacturer of architectural coatings may designate a limited quantity of coatings to be exempt from the VOC content limits in Table 1 and the exceedance fee provisions of section 59.403.

16. The Architectural Coatings Rule, at 40 C.F.R. § 59.407, states that each manufacturer using the exceedance fee provisions in section 59.403 or the tonnage exemptions in section 59.404, as an alternative to achieving the VOC content limits in Table 1, shall maintain certain written or electronic forms and records.

17. The Architectural Coatings Rule, at 40 C.F.R. § 59.408, states that each manufacturer of architectural coatings shall submit certain notifications and reports to EPA, including tonnage and exceedance fee documentation.

18. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of the Architectural Coatings Rule that occurred from January 31, 1997 through March 15, 2004; \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004; and \$37,500 per day of violation up to a total of \$295,000 for violations occurring after January 12, 2009 under section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

19. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the

first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violation alleged in this CCCA.

SPECIFIC ALLEGATIONS

20. Respondent owns and operates a manufacturing plant located in Layton, Utah.
21. Respondent is a corporation organized under the laws of the state of Utah.
22. Respondent is a "person" as defined at section 302(e) of the CAA, 42 U.S.C. § 7602(e) and 40 C.F.R. § 59.401.
23. Respondent started manufacturing and packaging SuperSeal 2000 650 VOC Acrylic Sealer (SuperSeal 2000) in 1995 for sale and distribution.
24. SuperSeal 2000 is an "architectural coating" as defined at 40 C.F.R. § 59.401.
25. SuperSeal 2000 is categorized as a "stain" under the water-proofing and treatments sub-category of Table 1 and has a VOC limitation of 600 grams of VOC per liter, except as provided in 40 C.F.R. §§ 59.403 and 59.404.
26. Respondent is therefore a person that produces, packages, or repackages architectural coatings for sale or distribution in the United States, and is therefore a "manufacturer" of architectural coatings as defined at 40 C.F.R. § 59.401.
27. Respondent was required to meet the 600 grams of VOC per liter limitation when the rules became effective on September 13, 1999.
28. Respondent manufactured, packaged, sold, and distributed SuperSeal 2000 with a content of 650 grams per liter in exceedance of the 600 grams of VOC per liter limitation from the

effective date of the rule (September 13, 1999) until Respondent remanufactured SuperSeal 2000 on March 24, 2011 to contain less than the VOC limitation.

29. Manufacturers may produce a certain amount of coatings over the limit, up to 9 mega grams per year in the year 2002 and each subsequent year under 40 C.F.R § 59.404(a)(1).

30. For any additional coatings produced over the limit, the manufacturer is required to pay a yearly exceedance fee.

31. Prior to 2009, Respondent failed to maintain any volume records regarding the manufacture and sale of SuperSeal 2000 in violation of 40 C.F.R. § 59.407.

32. Prior to April, 2011, Respondent failed to file any reports with EPA regarding its manufacture and sale of SuperSeal 2000 in violation of 40 C.F.R. § 59.408.

33. Respondent has never paid an exceedance fee or filed a tonnage exemption for manufacturing SuperSeal 2000 above the limits in Table 1 in violation of 40 C.F.R. §§ 59.403 and 59.404.

PENALTY

34. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the Act or its implementing regulations. For purposes of determining the amount of any civil penalty to be assessed, section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

35. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This CCCA contains all terms of the settlement agreed to by the parties. Respondent consents and agrees to pay a civil penalty in the amount of **TWENTY FIVE THOUSAND FIVE HUNDERD DOLLARS (\$25,500.00)**

TERMS OF SETTLEMENT

36. Respondent consents to the issuance of this CCCA, for the purposes of settlement and without admitting any of the allegations in this CCCA not heretofore admitted, and to the payment of the civil penalty cited in paragraph no. 35 above. Respondent shall pay the civil penalty cited in paragraph no. 35 above by making a total of eight (8) equal payments over a two (2) year period as set forth below. Respondent shall make an initial payment in the amount of **THREE THOUSAND ONE HUNDRED EIGHTY SEVEN DOLLARS AND FIFTY CENTS (\$3187.50)** in the manner described below:

- a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this CCCA. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case for this amount, payable to "**Environmental Protection Agency**," to:

**US checks by regular
US postal service mail:**

US EPA Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire
message should read "D 68010727
Environmental Protection Agency"

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required
fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Marc Weiner, Enforcement Attorney
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

Albion Carlson
U.S. EPA Region 8 (8ENF-AT)
1595 Wynkoop Street
Denver, CO 80202-1129

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C.

§ 3717, and will continue to accrue until the payment is received in full (i.e., on the 1st late day of the first payment, 30 days of interest accrues; interest will accrue back to the Final Order date to the date of receipt for any subsequent late installment payments).

- d. In addition to the accrual of interest specified in this paragraph 36(c) of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if any penalty payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a Federal or other tax deduction or credit.

37. Respondent shall make seven additional payments, each in the amount of : **THREE THOUSAND ONE HUNDRED EIGHTY SEVEN DOLLARS AND FIFTY CENTS (\$3187.50)**, according to the following schedule and in the same manner as referenced in Paragraph 36 above:

- a. No later than September 30, 2012;
- b. No later than December 31, 2012;
- c. No later than March 31, 2013;
- d. No later than June 30, 2013;
- e. No later than September 30, 2013;
- f. No later than December 31, 2013; and
- g. No later than March 31, 2014.

38. Respondent may pay the full penalty amount, or any remaining portion, any time prior to March 31, 2014, without incurring a pre-payment penalty.

39. EPA reserves the right to call due and Respondent must pay the outstanding balance thereof, including interest and penalties, within thirty days of receipt of notice that any of the above payments are late or have been missed.

CERTIFICATION OF COMPLIANCE

40. On or before sixty (60) days after the date of the Final Order approving this CCCA, Respondent shall submit to EPA a Certification of Compliance, establishing that Respondent is in full compliance with the Act and 40 C.F.R. part 59, subpart D.

41. The Certification of Compliance shall contain the date, printed name, and signature of a Concrete Coatings officer, as well as the following statement:

I certify that I am authorized to verify the completion of work on behalf of Concrete Coatings, Inc.. I certify under penalty of perjury that the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

42. The Certification of Compliance shall be mailed or emailed to Albion Carlson at the following address:

U.S. EPA Region 8,
Attn: Albion Carlson, Mail Code: 8ENF-AT
1595 Wynkoop Street
Denver, CO 80202-1129

E-mail: carlson.albion@epa.gov

OTHER TERMS

43. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.

44. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.

45. Nothing in the CCCA shall be construed as a waiver by the United States of its authority

to seek costs or any appropriate penalty associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.

46. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into and legally bind Respondent to the terms and conditions of this CCCA.

47. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.

48. Each party shall bear its own costs and attorney fees in connection with this matter.

49. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

50. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and

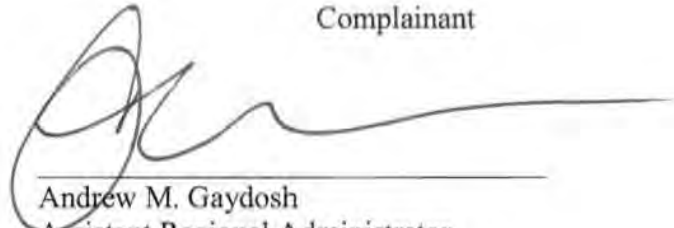
full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in this CCCA.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Office of Enforcement, Compliance, and
Environmental Justice

Complainant

Date: 5/31/2012

By:



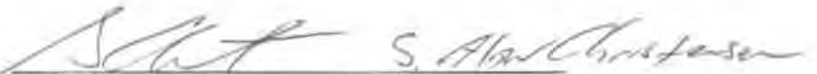
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

CONCRETE COATINGS, INC.
Layton, Utah

Respondent

Date: 5-24-12

By:



[NAME] S. Alan Christensen
[TITLE] President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter of **CONCRETE COATINGS, INC.; DOCKET NO.: CAA-08-2012-0007** was filed with the Regional Hearing Clerk on June 5, 2012.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested and e-mailed on June 5, 2012.

David B. Stevenson
Stevenson & Smith, P. C.
3986 Washington Blvd
Ogden, UT 84403

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

June 5, 2012



Tina Artemis
Paralegal/Regional Hearing Clerk

