

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

Filed March 31, 2021 @ 8:45 am

USEPA – Region II

Regional Hearing Clerk

In the Matter of:

Poly Works Inc.

Respondent,

Proceeding Under Section 3008 of the
Resource Conservation and Recovery
Act as amended.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2021-7102

PRELIMINARY STATEMENT

This is a civil administrative enforcement proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901 *et seq.* (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at Title 40 of the Code of Federal Regulations ("C.F.R.") Parts 260-273 and 279. Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York has been authorized by EPA to conduct hazardous waste programs ("authorized state program").

Pursuant to 40 C.F.R. § 22.13(b), where the parties agree to settlement of one or more causes of action before the filing of an administrative 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) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions.

EPA has given notice of this action to the State of New York.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent

1. Respondent is Poly Works Inc. ("Poly Works"), a for profit corporation organized pursuant to the laws of the State of New York in 1984.

2. Respondent owned and operated a facility located at 110 Corporate Drive in New Windsor, New York (the "Facility").
3. Respondent is a "person" as that term is defined in Section 1004 (15) of the Act, 42 U.S.C. § 6903(15), and 6 New York Code of Rules and Regulations ("6 NYCRR") § 370.2(b).
4. Respondent conducted operations at the Facility from 1984 to 2019.
5. Respondent is and has been the "owner" and/or "operator" of the Facility within the meaning of 6 NYCRR § 370.2(b).
6. Upon information and belief, in 2019, Respondent moved its operations to another facility located at 40 Governor Drive, Newburgh, New York 12550 and it is now conducting business at that location.

Respondent's Generation and Management of Hazardous Waste

7. Respondent was engaged at the Facility in printing and manufacturing polyethylene bags using three (3) flexographic printing presses, and a welding machine to seal the printed bags.
8. Respondent, when carrying out the activities in the previous paragraph, generated "solid waste" and "hazardous waste" at its Facility, as those terms are defined in 6 NYCRR § 371.1(c) & (d).
9. Respondent is and has been a "generator" of hazardous waste at its Facility, as that term is defined in in 6 NYCRR § 370.2(b).
10. At the time of EPA's 2018 inspection, as described in the paragraph below, Respondent at the Facility was generating greater than 1000 kilograms ("kg") of non-acute hazardous waste in a calendar month and was considered a "Large Quantity Generator" ("LQG") of hazardous waste.

EPA Investigative and Enforcement Activities

11. On or about December 4, 2018, duly designated representatives of EPA inspected Respondent's Facility pursuant to Section 3007 of the Act, 42 U.S.C. § 6927 to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations, including New York State's federally authorized hazardous waste regulations (the "Inspection").
12. On or about December 12, 2018, EPA sent Respondent a copy of its Inspection Report, which included a summary of EPA's findings ("EPA's Inspection Findings") and requested that Respondent submit a response to EPA's Inspection Findings.
13. On or about January 15, 2019, Respondent submitted a response to EPA's Inspection Findings.
14. Based on the Inspection and Respondent's response to EPA's Inspection Findings, EPA determined that Respondent had prior to 2019 failed to:

- a. meet conditions that would have allowed the storage of hazardous waste for a limited duration of time without a permit and that it had stored hazardous waste without interim status or a permit in violation of 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2(a); and
 - b. minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents as required by 6 NYCRR 373-3.3(b).
15. On June 4, 2020, EPA sent a letter to Respondent to determine its interest in pre-filing discussions regarding the violations EPA identified.
16. From early June 2020 through late November 2020, EPA and Respondent had several informal settlement conferences, telephone calls and email exchanges. The Parties agreed to settle this matter as provided herein.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, 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: (a) admits the jurisdictional basis for EPA prosecuting this case; (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law; (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.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date").

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter comply with RCRA and all applicable New York State federally authorized hazardous waste regulations relating to the generation and storage of hazardous waste at its new facility in Newburgh, NY, including:
 - a. meeting all conditions that allow for the storage of hazardous waste for a limited duration without a permit or applying for and obtaining a hazardous waste permit from the State of New York including:
 - i. marking containers in any satellite accumulation area with the words "Hazardous Waste," as required by 6 NYCRR Parts 372.2(a)8(i)(‘a’)(‘2’)
 - ii. conducting weekly inspections, as required by 6 NYCRR Parts 372.2(a)8(ii), 373-1.1(d)(1)(iii)(‘c’)(‘1’)(‘i’) and 373-3.9(e)

- iii. conducting applicable hazardous waste training, as required by 6 NYCRR Parts 372.2(a)8(ii), 373-1.1(d)(1)(xix), and 373-3.2(g)
 - iv. maintaining hazardous waste personnel training records, as required by NYCRR Parts 372.2(a)8(ii), 373-1.1(d)(1)(iii)(‘c’)(‘5’) and 373-3.2(g)(4)-(5); and
- b. minimizing the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents as required by 6 NYCRR 373-2.3(b).
2. Respondent hereby certifies that, as of the date of its signature to this Agreement and to the best of its knowledge and belief, it is in compliance at its Newburgh, New York facility with all the RCRA requirements referenced in Paragraph 14 of EPA's Findings of Facts and Conclusions of Law of this CA/FO.
3. 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 federal, state and local laws and regulations relating to any generation, management, treatment, storage, transport or offering for transport, or disposal of hazardous waste by the Respondent.
4. Penalty: Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims. Forty C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments. The Treasury current value of fund rate is one percent (1%) per annum for calendar year 2021.

The applicable interest is currently at the rate of one percent (1%) per annum on the outstanding principal balances. As a civil penalty, Respondent shall make *total payments including interest* to equal **Thirty Thousand One Hundred and Twenty-One Dollars and Sixty-Six Cents (\$30,121.66)**, in three installments as follows.

- a. The first installment of **Ten Thousand Eighty Dollars (\$10,080.00)**, consisting of a principal payment of **\$10,080.00** and an interest payment of **\$0.00** must be paid on or before 30 days from the effective date; and
- b. The second installment of **Ten Thousand and Thirty-Three Dollars and Thirty- three cents (\$10,033.33)**, consisting of a principal payment of **\$10,000.00** and an interest payment of **\$33.33**, must be paid on or before 60 calendar days from the effective date.
- c. The second installment of **Ten Thousand Eight Dollars and Thirty-Three Cents (\$10,008.33)**, consisting of a principal payment of **\$10,000.00** and an interest payment of **\$8.33**, must be paid on or before 90 calendar days from the effective date

5. The payments, in accordance with the terms and schedule of this Consent Agreement, shall be made by cashier's check, certified check, electronically via Fedwire or on-line. Each payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payments by cashier's check or certified check, then each such check shall be *received* at the below-listed address on or before the date specified. If Respondent makes payments electronically, then each such Fedwire or on-line payment shall be *received* on or before the date specified.
- a. If the payment is made by check, then the check shall be:
 - i. made payable to the **Treasurer, United States of America;**
 - ii. identified with a notation thereon listing the following: ***In the Poly Works Inc., Docket No. RCRA-02-2021-7102;*** and
 - iii. mailed to:

**U.S. Environmental Protection Agency
Fines and Penalties Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000.**
 - b. If Respondent chooses to make the payment by Fedwire, then Respondent shall provide the following information to the remitter bank:
 - i. Amount of Payment
 - ii. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045;**
 - iii. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**
 - iv. Federal Reserve Bank of New York ABA routing number: **021030004;**
 - v. Field Tag 4200 of the Fedwire message should read: **D 8010727 Environmental Protection Agency;**
 - vi. Name of Respondent and Matter: **"Poly Works Inc.;"** and
 - vii. Docket Number: **RCRA 02-2021-7102.**
 - c. If Respondent chooses to make on-line payments, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under "EPA Miscellaneous Payments – Cincinnati Finance Center;" and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to yu.jeannie@epa.gov and wise.milton@epa.gov with **"In the Matter of Poly Works Inc., RCRA-02-2021-7102"** as the subject line.

6. Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.
7. If Respondent fails to make timely payment of any one of the required installments in accordance with the schedule set forth in paragraph 4 of this Consent Agreement, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, the following handling charges and late penalty charges in the event of any such failure or default and shall remit such payment in accordance with the payment instructions in paragraph 5 of this Consent Agreement, above.
 - a. Handling Charges: Pursuant to 31 U.S.C. Section 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day 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.
 - b. Late Payment Penalty Charge: A late penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days, 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
8. Respondent may, at any time after commencement of payment under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
9. The civil penalty provided for in this section (including any payment(s) for interest or late payment handling charge that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.
10. Respondent certifies that it has requested of EPA that payment of the \$30,080.00 civil penalty be in installments because of the financial condition of Respondent, *viz.* a onetime payment of said amount would constitute a hardship for Respondent because of its cash flow and the overall financial circumstances of Respondent at the time of execution of the consent agreement.
11. Complainant shall email to Respondent (to the representative designated in Paragraph 12 of this Consent Agreement, *infra*) a copy of the fully executed CA/FO. Respondent consents to service of the CA/FO by email and consents to service upon it by an employee of EPA other than the Regional Hearing Clerk.

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

Carlos Colombani, Enforcement Officer
Enforcement & Compliance Assurance Division
colombani.carlos@epa.gov

a n d

Jeannie M. Yu, Assistant Regional Counsel
Office of Regional Counsel
yu.jeannie@epa.gov

13. Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall send any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent by email to the following address:


Kevin Biddiscombe
Vice President
Poly Works Inc.
40 Governor Drive,
Newburgh, New York 12550
kevin@polyworksinc.com

14. Full payment of the penalty described in Paragraph 4 of the Consent Agreement, shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts described in paragraph 14 of EPA's 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.
15. The provisions of this Consent Agreement shall be binding upon Respondent, and its successors or assigns.
16. Respondent waives its right to request or to seek any hearing in this matter including one on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or EPA's Findings of Fact and Conclusions of Law, above.
17. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.
18. Each party hereto agrees to bear its own costs and attorney's fees in this matter.
19. The undersigned signatory for Respondent certifies that he\she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

20. EPA and Respondent agree that the parties may use electronic signatures for this matter.

In the Matter of Poly Works Inc., Docket Number: RCRA 02-2021-7102

RESPONDENT:



Kevin Biddiscombe
Vice President
Poly Works Inc.
40 Governor Drive
Newburgh, New York 12550

In the Matter of Poly Works Inc., Docket Number: RCRA 02-2021-7102

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Poly Works Inc.*, bearing Docket No. RCRA-02-2021-7102. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

In the Matter of Poly Works Inc., Docket Number: RCRA 02-2021-7102

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 EMAIL:

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

Copy by EMAIL:

Kevin Biddiscombe
Vice President
Poly Works Inc.
40 Governor Drive
Newburgh, New York 12550
kevin@polyworksinc.com

Dated: _____, 2021
New York, NY
