



### **Parties**

3. Complainant is the Chemical Branch Chief of the Enforcement and Compliance Assurance Division of EPA, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is The Powder Shop, Inc., a business authorized to operate under the laws of Iowa.

### **Statutory and Regulatory Framework**

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 3001, 3002, and 3005 of RCRA, 42 U.S.C. §§ 6921, 6922, and 6925, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Parts 261, 262, 273 and 279.

7. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

8. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

10. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

11. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to

reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

12. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

13. “Solid waste” is defined at 40 C.F.R § 261.2.

14. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

15. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

16. The regulation at 40 C.F.R. § 260.10 defines “small quantity generator” as a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

17. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period.

18. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$75,867 for violations that occur after November 2, 2015, and are assessed after January 13, 2020. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

### **General Factual Background**

19. Respondent is a corporation and authorized to conduct business within the State of Iowa. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

20. Respondent owns and operates a facility located at 6715 8<sup>th</sup> Street Southwest, Cedar Rapids, Iowa (“facility”). Respondent performs custom and industrial coating,

sandblasting, and metal grit blasting on various metal items. Respondent employs approximately 25 people.

21. On or about May 10, 2017, Respondent notified EPA of its generator status as a small quantity generator of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.

22. On or about May 16, 2019, an EPA inspector conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a Small Quantity Generator of hazardous waste, a Small Quantity Handler of universal waste, and a used oil generator.

23. At the time of the inspection, the following wastes, among others, were present. These are solid and hazardous wastes as defined at 40 C.F.R. §§ 261.2 and 261.3:

- a. Five gallons of solvent-contaminated paper disposable wipes generated per week. Solvent-contaminated paper disposable wipes are D001 characteristic hazardous waste and F003 and F005 listed hazardous waste.
- b. Ten gallons of solvent-contaminated cloth shop rags generated per week. Solvent-contaminated cloth shop rags are D001 characteristic hazardous waste and F003 and F005 listed hazardous waste.
- c. Twenty-seven 55-gallon containers of waste paint related material at multiple locations around the facility. Waste paint related material is D001 characteristic hazardous waste and F003, F005 listed hazardous waste.

24. At the time of the inspection, the following used oil containers were present:

- a. One 330-gallon container of used oil.
- b. Three 55-gallon drums of used oil.

25. Respondent has been assigned the following EPA ID Number: IA0000029587.

### **Violations**

26. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

#### **Count 1**

#### **Failure to Conduct Adequate Hazardous Waste Determinations**

27. Complainant hereby incorporates the allegations contained in Paragraphs 19 through 25 above, as if fully set forth herein.

28. Pursuant to 40 C.F.R. § 262.11, a generator of solid waste, as defined in 40 C.F.R.

§§ 260.10 and 261.2, must determine if that waste is a hazardous waste using methods prescribed in the regulations.

29. As a result of the inspection, it was determined that the waste streams identified in Paragraph 23 above were present or regularly generated at Respondent's facility.

30. At the time of the inspection, Respondent had not conducted an adequate hazardous waste determination on the solid waste streams described Paragraph 23 above.

31. Respondent violated Section 3001 of RCRA, 42 U.S.C. § 6921 and 40 C.F.R. § 261.11 for failing to perform adequate hazardous waste determinations on the above-referenced solid waste streams.

## Count 2

### Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

32. Complainant hereby incorporates the allegations contained in Paragraphs 19 through 25 above, as if fully set forth herein.

33. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

34. At the time of the inspection, Respondent did not have a permit or interim status.

### **Generator Requirements**

35. The regulation at 40 C.F.R. § 262.16 states that a small quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the requirements of 40 C.F.R. Parts 124, 264 through 267, and 270, or the notification requirements of 3010 of RCRA, provided that all the conditions for exemption listed in 40 C.F.R. Part 262.16 are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at its facility for any length of time. Respondent failed to comply with the following conditions:

#### *Inspections*

36. Pursuant to 40 C.F.R. § 262.16(b)(2)(iv) states that at least weekly, the small quantity generator must inspect central accumulation areas. The small quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

37. At the time of the inspection, the weekly inspection for the week of May 13, 2019, had not been completed.

*Labeling and marking of containers*

38. Pursuant to 40 C.F.R. §§ 262.16(b)(6)(i)(A)-(C) state that the small quantity generator must mark or label its containers with the following:

- a. The words “Hazardous Waste”;
- b. An indication of the hazards of the contents; hazard communication consistent with Department of Transportation requirements; a hazard statement or pictogram consistent with Occupational Safety and Health Administration Hazard Communication Standard; or a chemical hazard label consistent with the National Fire Protection Association; and
- c. The date upon which each period of accumulation begins clearly visible for inspection on each container.

39. At the time of the inspection, two 55-gallon containers of hazardous waste located in the hazardous waste accumulation area were not labeled with the words “Hazardous Waste,” were not labeled with an indication of the hazards of the contents, or labeled with the accumulation start date.

*Emergency Procedures: Required equipment*

40. Pursuant to 40 C.F.R. § 262.16(b)(8)(ii), all areas where hazardous waste is either generated or accumulated must be equipped with the following items: a) an internal communications or alarm system capable of providing immediate emergency instruction to facility personnel; b) a device, such as a telephone or hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams; c) portable fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment; and d) water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

41. At the time of the inspection, the following required equipment was not present at Respondent’s facility: an internal communications or alarm system capable of providing immediate emergency instruction to facility personnel and a device, such as a telephone or hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams.

*Emergency Procedures: Access to communications or alarm system*

42. Pursuant to 40 C.F.R. § 262.16(b)(8)(iv)(A), whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or

through visual or voice contact with another employee unless such a device is not required by 40 C.F.R. § 262.16(a)(8)(ii).

43. Pursuant to 40 C.F.R. § 262.16(b)(8)(iv)(B), in the event there is just one employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone or hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under 40 C.F.R. § 262.16(a)(8)(ii).

44. At the time of the inspection, employees did not have immediate access to an internal alarm, emergency communication device, telephone or hand-held two-way radio.

*Emergency Procedures: Required aisle space*

45. Pursuant to 40 C.F.R. § 262.16(b)(8)(v), the small quantity generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

46. At the time of the inspection, the EPA inspector observed insufficient aisle space at the hazardous waste accumulation area.

*Emergency Procedures: Arrangements with local authorities*

47. Pursuant to 40 C.F.R. § 262.16(b)(8)(vi)(A), the small quantity generator must attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility.

48. Pursuant to 40 C.F.R. § 262.16(b)(8)(vi)(B), the small quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency.

49. At the time of the inspection, Respondent had not attempted to make arrangements with all the local emergency responders and failed to maintain records documenting arrangements made with appropriate emergency responders.

*Emergency Procedures: Designate emergency coordinator*

50. Pursuant to 40 C.F.R. § 262.16(b)(9)(i), at all times there must be at least one employee designated the emergency coordinator who is either on the premises or on call with the responsibility for coordinating all emergency response measures.

51. At the time of the inspection, Respondent had not designated an emergency coordinator.

*Emergency Procedures: Post emergency preparedness information*

52. Pursuant to 40 C.F.R. § 262.16(b)(9)(ii), the small quantity generator must post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste: a) the name and emergency telephone number of the emergency coordinator; b) location of fire extinguishers and spill control material, and, if present, fire alarm; and c) the telephone number of the fire department, unless the facility has a direct alarm.

53. At the time of the inspection, the information described in the immediately preceding paragraph was not posted next to telephones or in areas directly involved in the generation and accumulation of hazardous waste.

*Emergency Procedures: Familiarizing employees with waste handling responsibilities*

54. Pursuant to 40 C.F.R. § 262.16(b)(9)(iii), the small quantity generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

55. At the time of the inspection the Respondent had not familiarized its employees of proper waste handling and emergency procedures relevant to their responsibilities.

*Satellite Accumulation*

56. The regulation at 40 C.F.R. § 262.15 states that a generator may accumulate as much as fifty-five (55) gallons of non-acute hazardous waste or either one quart of liquid acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter or 1 kilogram (2.2 pounds) of solid acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter in containers at or near any point of generation where wastes are initially accumulated which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, provided that all of the conditions for exemption in this section are met. The Respondent failed to comply with the following conditions for exemption for satellite accumulation:

*Container must be marked or labeled*

57. Pursuant to 40 C.F.R. §§ 262.15(a)(5)(i) and (ii), a generator must mark or label its satellite accumulation container with the words "Hazardous Waste" and with an indication of the hazards of the contents (i.e. ignitable, corrosive, reactive, toxic).

58. At the time of the inspection, the inspector observed one 5-gallon satellite accumulation container of hazardous waste that was not properly marked or labeled.

59. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 36 through 55 above and the satellite accumulation requirements as set forth in Paragraphs 56 through 58 above, Respondent was not authorized to accumulate hazardous waste

at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

**Count 3**  
**Failure to Comply with Used Oil Regulations**

60. Complainant hereby incorporates the allegations contained in Paragraphs 19 through 25 above, as if fully set forth herein.

*Used Oil: Failure to label used oil containers*

61. Pursuant to 40 C.F.R. § 279.22(c)(1), used oil generators are required to label or clearly mark containers used to store used oil at generator facilities with the words “Used Oil.”

62. At the time of the inspection, Respondent failed to label or clearly mark the following used oil containers:

- a. One 330-gallon tote of used oil; and
- b. Three 55-gallon drums of used oil.

63. Respondent’s failure to label the containers of used oil described above is a violation of 40 C.F.R. § 279.22(c)(1).

*Used Oil: Condition of units*

64. Pursuant to 40 C.F.R. § 279.22(b)(1)-(2), containers used to store used oil at generator facilities must be in good condition (no severe rusting, apparent structural defects or deterioration), and must not be leaking (no visible leaks).

65. At the time of the inspection one 330-gallon tote was not in good condition and was visibly leaking.

**CONSENT AGREEMENT**

66. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;

- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

67. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

68. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

69. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

70. Respondent consents to the issuance of this Consent Agreement and Final Order, and consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail addresses: KAC@ShuttleworthLaw.com and SJP@ShuttleworthLaw.com.

### **Penalty Payment**

71. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of nineteen thousand dollars (\$19,000), as set forth below.

72. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

73. A copy of the check or other information confirming payment shall simultaneously be e-mailed to the following:

Lisa Haugen, Regional Hearing Clerk  
[haugen.lisa@epa.gov](mailto:haugen.lisa@epa.gov); and

Kelley Catlin, Attorney  
catlin.kelley@epa.gov.

74. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

### **Effect of Settlement and Reservation of Rights**

75. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

76. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

77. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

78. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

79. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Sixty-One Thousand Ninety-Eight Dollars (\$61,098) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

80. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or

corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

81. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

82. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

### **General Provisions**

83. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

84. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

85. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

86. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

87. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Date

\_\_\_\_\_  
Candace Bednar  
Chemical Branch Chief  
Enforcement and Compliance Assurance Division

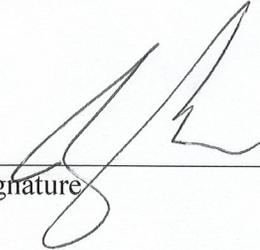
\_\_\_\_\_  
Date

\_\_\_\_\_  
Kelley Catlin  
Office of Regional Counsel

RESPONDENT:

THE POWDER SHOP, INC.

6/7/20  
Date

  
Signature

D. GARY EVERS  
Printed Name

PRESIDENT  
Title

**FINAL ORDER**

Pursuant to Sections 3008(a) and (g) of 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, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

\_\_\_\_\_  
Date