



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
SAM NUNN  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA GEORGIA 30303-8960

AUG 24 2010

**UNITED PARCEL SERVICE**

Mr. John Dempsey  
Vice President  
Vulcan Painters, Incorporated  
P.O. Box 1010  
2400 Woodward Rd  
Bessemer, Alabama 35020

Re: Consent Agreement and Final Order  
In the Matter of Vulcan Painters, Incorporated  
Docket No. CAA-04-2010-1542(b)

RECEIVED  
2010 AUG 24 AM 9:47  
MURPHY STEIN

Dear Mr. Dempsey:

Enclosed please find a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.05(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV (Final Order), for the terms and instructions regarding Vulcan Painter's final payment on the penalty due. Any questions regarding the processing of Vulcan Painter's penalty may be directed to Ms. Lori Weidner, Financial Management Office, at (513) 487-2125.

If you have any other questions, please contact Ahmad Dromgoole of the North Air Enforcement Section at (404) 562-9212 or Michiko Kono, Associate Regional Counsel, at (404) 562-9558.

Sincerely,

Beverly A. Spagg  
Chief  
Air and EPCRA Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF: )  
 )  
Vulcan Painters, Incorporated )  
Birmingham, Alabama )  
 )  
Respondent. )  
 )

Docket No. CAA-04-2010-1542(b)

2010 AUG 24 AM 10:07  
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**CONSENT AGREEMENT AND FINAL ORDER**

**1. Nature of the Action/Jurisdictional Statements**

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Acting Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Vulcan Painters, Incorporated (hereinafter, "Respondent") which owns and operates a facility in Birmingham (Jefferson County), Alabama.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

3. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is incorporated in the State of Alabama.

5. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

6. Pursuant to Section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b), after the effective date of any permit program approved or promulgated under

Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. See 57 Fed. Reg. 32295; 40 C.F.R. Part 70.

7. EPA promulgated full approval of the Jefferson County Department of Health's (JCDH) Title V program on October 29, 2001. JCDH's Title V program became effective on November 28, 2001. 66 Fed Reg. 54444; 40 C.F.R. Part 70.

8. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), authorizes EPA to promulgate emission standards for categories of sources of hazardous air pollutants (HAPs), listed in Section 112(b)(1) of the CAA. Those regulations have been promulgated at 40 C.F.R. Part 63, and regulate specific categories of stationary sources that emit (or have the potential to emit) one or more HAPs. The HAP regulations contain general provisions in Subpart A and special provisions for specific categories in the subparts to Part 63.

9. On January 2, 2004, EPA promulgated the final rule for the source category, Surface Coating of Miscellaneous Metal Parts and Products, or "Subpart M MMM" (69 Fed. Reg. 129). Subpart M MMM was later amended on April 26, 2004 (69 Fed. Reg. 22601). The compliance date for existing sources subject to Subpart M MMM is January 2, 2007. 40 C.F.R. § 63.3883.

10. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$32,500 per day for each violation of the CAA that occurred between March 15, 2004, and January 12, 2009. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed.

11. Consistent with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the requisite joint determination was made by EPA and the United States Department of Justice.

## II. Factual Allegations

12. Respondent owns and operates a surface coating facility which applies protective coatings to ductile iron pipes. The facility is located at 1549 Red Hollow Rd., Birmingham (Jefferson County), Alabama 35215.

13. Respondent is considered a major source of HAPs under Section 112(a) of the Clean Air Act and is subject to regulations for the Surface Coating of Miscellaneous Metal Parts, 40 C.F.R. Part 63, Subpart M MMM.

14. Respondent was issued Part 70 Operating Permit No. 4-07-0002-02 (Title V permit) on June 4, 2004.

15. Respondent violated condition Nos. 45 and 58 of its Title V permit and 40 C.F.R. § 63.3910(c) when it failed to submit a notification of compliance status within 30 calendar days of the end of the initial compliance period.

16. Respondent violated condition Nos. 45 and 58 of its Title V permit and 40 C.F.R. § 63.3920(a) when it failed to submit necessary information regarding compliance with Subpart M MMM in its semiannual reports for 2008. Specifically, reports were missing the description of the chosen compliance option and whether there was continuous compliance or deviations.

### III. Consent Agreement

17. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in Paragraphs 1 through 11 above, but Respondent neither admits nor denies the factual allegations set out in Paragraphs 12 through 16 above.

18. As provided in 40 C.F.R. § 22.18(b)(2), for the purposes of this proceeding, Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.

19. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

20. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of its Title V permit and Subpart M MMM at its facility at 1549 Red Hollow Road in Birmingham, Alabama.

21. Compliance with this CAFO shall resolve the alleged violations contained herein, and EPA hereby releases Respondent from all liability for the violations of the Title V permit alleged herein. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, EPA does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO. Respondent reserves its rights and defenses regarding liability in any proceedings other than a proceeding by Complainant to enforce this CAFO.

22. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

### IV. Final Order

23. Respondent shall pay a civil penalty of forty-five thousand dollars (**\$45,000**).

24. Respondent shall pay the penalty **within 30 days** of the effective date of the CAFO by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

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

**The check shall reference on its face the name of the Respondent and the Docket Number of the CAFO.**

25. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA – Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Mr. Ahmad Dromgoole  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Ms. Saundi Wilson (OEA)  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

26. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for the civil penalty payment made pursuant to paragraph 23.

27. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date payment is due, if the penalty is not paid by the date required. Interest will be assessed at the

rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

28. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

29. This CAFO shall be binding upon the Respondent, its successors and assigns.

30. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Mr. Ahmad Dromgoole  
Air Enforcement and EPCRA Branch  
Air, Pesticides and Toxics Management Division  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9212

31. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

*Remainder of page intentionally left blank.*

**AGREED AND CONSENTED TO:**

**Vulcan Painters, Incorporated**

By: *John R. Dempsey Jr.* (Signature) Date: 8/18/10

Name: John R. Dempsey Jr. (Typed or Printed)

Title: Vice President (Typed or Printed)

**U.S. Environmental Protection Agency**

By: *Carol L. Kemker*

Date: 8/13/2010

Carol L. Kemker, Acting Director  
Air, Pesticides and Toxics  
Management Division  
Region 4

**APPROVED AND SO ORDERED** this 23<sup>rd</sup> day of August, 2010.

*Susan B. Schub*

Susan B. Schub  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Vulcan Painters, Incorporated, Docket No. CAA-04;2010-1542(b), on the parties listed below in the manner indicated:

Ahmad Dromgoole (Via EPA's internal mail)  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Michiko Kono (Via EPA's internal mail)  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, GA 30303

Mr. John Dempsey (Via Certified Mail  
Return Receipt Requested)  
Vice President  
Vulcan Painters, Incorporated  
P.O. Box 1010  
Bessemer, Alabama 35021

Date: August 24, 2010

*Patricia A. Bullock*  
for Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental Protection  
Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404)562-9511