



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MS : 9 2011

Certified Mail
Return Receipt Requested

Mr. Todd Winters
Registered Agent
Surface Koatings, Inc.
463 Fern Valley Road
Whitehouse, Tennessee 37188

Re: Consent Agreement and Final Order
In the Matter of Surface Koatings, Inc.
Docket No. CAA-04-2011-1525(b)

Dear Mr. Winters:

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. Payment of the penalty has been received. Any questions regarding the processing of the Surface Koatings, Inc's penalty may be directed to Mr. Bryce Lehman, Financial Management Office, at (513) 487-2123.

If you have any other questions, please contact Mr. Chetan Gala of the South Air Enforcement Section at (404) 562-9746.

Sincerely,

A handwritten signature in black ink that reads "Beverly A. Spagg".

Beverly A. Spagg
Chief, Air Enforcement & EPCRA Branch
Air, Pesticides and Toxics
Management Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

Surface Koatings, Inc.

Whitehouse, Tennessee

Respondent.

Docket No. CAA-04-2011-1525(b)

Hearings Clerk

11 AUG 19 AM 9:03

USEPA, REGION 4
OFFICE OF ENVIRONMENTAL
ACCOUNTABILITY

CONSENT AGREEMENT AND FINAL ORDER

I. 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 Title 40 Code of Federal Regulations (40 C.F.R.) Part 22, for alleged violations of Section 183(e) of the Act, as amended, 42 U.S.C. § 7511b(e).
2. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Surface Koatings, Inc. (hereinafter, "Respondent"). Respondent owns and operates an architectural coatings manufacturing facility located at 12049 A Lebanon Road, Mt. Juliet, Tennessee 37122 or a new location at: 134 Davis Street, Portland, Tennessee 37148.
3. Consistent with Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the requisite joint determination has been made by EPA and the United States Department of Justice that this matter is appropriate for administrative penalty action.
4. 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.
5. 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.

6. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).
7. Respondent is a corporation whose main business is the manufacture and/or distribution of architectural coatings and is therefore subject to the requirements of 40 C.F.R. Part 59, Subpart D.
8. Respondent is a "manufacturer" and/or "importer" of architectural coatings as defined at 40 C.F.R. § 59.401.
9. Respondent's corporate headquarters is located at: 463 Fern Valley Road, Whitehouse, Tennessee 37188, or according to the company website, the headquarters and/or manufacturing facility may have been moved to a new location at: 134 Davis Street, Portland, Tennessee 37148
10. The federal regulations implementing Section 183 of the CAA describe reporting requirements for manufacturers and/or importers of architectural coatings. The reporting requirements include a mandate that each manufacturer and importer of any architectural coating shall submit an initial notification report no later than September 13, 1999, or within 180 days after the date that the first architectural coating is manufactured or imported, whichever is later. See 40 C.F.R. §§ 59.400, 59.408(b).
11. 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 \$27,500 per day for each violation that occurred on or after January 31, 1997, not more than \$32,500 per day for each violation that occurred after March 15, 2004, and not more than \$37,500 per day for each violation that occurred after January 12, 2009.

II. Factual Allegations

12. Upon information and belief, Surface Koatings, Inc., failed to comply with the initial notification requirements from on or about April 9, 2001 (the point at which 180 days have passed since the first architectural coating was manufactured or imported) until March, 2010. In accordance with 40 C.F.R. § 59.408(b), notice was due to EPA by Surface Koatings, Inc., on or about April 9, 2001, because Surface Koatings, Inc., has been in existence since October 11, 2000. Therefore, Surface Koatings, Inc., violated the initial notification requirements of the federal regulations at 40 C.F.R. § 59.408.

13. On or about March 19, 2010, in response to an information request letter sent by EPA pursuant to the Act, Section 114, 42 U.S.C. § 7414, Surface Koatings, Inc., provided EPA with the initial notification.

III. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations in paragraphs 1 through 11 set out above, but neither admits nor denies the factual allegations in paragraphs 12 through 13 set out above.
15. As provided in 40 C.F.R. § 22.18(b)(2), for the purposes of this proceeding, Respondent waives its right to a hearing on the allegations contained herein.
16. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with the compliance requirements of 40 C.F.R. Part 59, Subpart D, for the period from June 1, 2010 through May 31, 2011.
17. Compliance with this CAFO shall resolve the allegations of violations contained herein and known to the EPA at this time. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives 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.
18. 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

19. Respondent shall pay a civil penalty of **SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500)**.
20. Respondent shall pay the penalty **within 30 days** of the effective date of the CAFO by forwarding a cashier's or certified check in the amount specified in paragraph 19, 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 and the Docket Number of the CAFO (Surface Koatings, Inc., Docket Number CAA-04-2011-1525(b)).

Alternatively, **within 30 days** of the effective date of the CAFO, Respondent shall pay the penalty by wire transfer. The wire transfer shall be directed to the Federal Reserve Bank of New York, as described below.

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

The wire transfer shall reference the name of the Respondent and the Docket Number of the CAFO (Surface Koatings Inc., Docket Number CAA-04-2011-1525(b)).

21. At the time of the payment, Respondent shall send a separate copy of the check or send a copy of the wire transfer authorization form and transaction record, and a written statement that payment has been made in accordance with this CAFO, to the following persons:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

Chetan T. Gala
Air and EPCRA Enforcement Branch
Air, Pesticides and Toxics Management Division
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

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

22. 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 payment referenced in paragraph 19, from the date of entry of this CAFO, if any such payment is not paid by the date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.
23. The penalty described in paragraph 19, shall represent civil penalties assessed by Complainant within the meaning of section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not a tax-deductible expenditure for purposes of federal law.
24. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
25. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
26. This CAFO shall be binding upon the Respondent, its successors and assigns.
27. 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.
28. The following individual is authorized to receive service for EPA in this proceeding:

Chetan T. Gala
Air Enforcement and EPCRA Branch
Air, Pesticides and Toxics Management Division
U.S. EPA – Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(404) 562-9746

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V. Effective Date

29. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Surface Coatings, Inc.

By: Donald T. Winters Date: 07/19/2011

Name: Donald T. Winters

Title: President

U.S. Environmental Protection Agency

By: Carol S. Kemper for Date: 7/12/11

Beverly H. Banister, Director
Air, Pesticides & Toxics Management Division
EPA Region 4

APPROVED AND SO ORDERED this 18th day of August, 2011.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of: Surface Koatings, Inc., Docket No. CAA-04-2011-1525(b), on the parties listed below in the manner indicated.

Chetan T. Gala
Air and EPCRA Enforcement Branch
U.S. EPA, Region 4, APTMD
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Michiko Kono
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

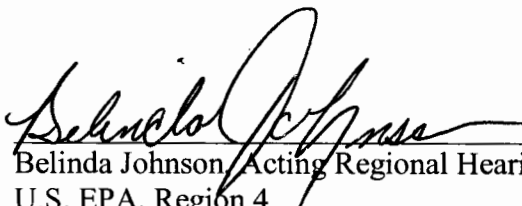
(Via EPA's internal mail)

(Respondent)

(Via Certified Mail, Return Receipt Requested)

Todd Winters
Registered Agent
Surface Koatings, Inc.
463 Fern Valley Rd.
Whitehouse, TN 37188

Date: 8/19/11


Belinda Johnson, Acting Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9686