

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Koppers, Inc.,	:	
	:	
Respondent.	:	U.S. EPA-REGION 3-RHC FILED-11 JUN2018pm4:15
	:	EPA Docket No. RCRA-03-2018-0106
Koppers, Inc.	:	
50 Koppers Lane	:	
Montgomery, Pennsylvania, 17752,	:	
	:	
Facility.	:	Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6928(a)
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	:	
	:	

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA”, “Agency” or “Complainant”) and Koppers, Inc. (“Respondent”) pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. This Consent Agreement and the accompanying Final Order (hereinafter jointly referred to as this “CAFO”) address alleged violations by Respondent of RCRA and the federally authorized Pennsylvania Hazardous Waste Management Regulations (“PaHWMR”), codified at 25 Pa. Code Chapters 260a – 266a, 266b, and 268a – 270a.

3. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the "Pennsylvania Hazardous Waste Management Program") in lieu of the federal hazardous waste management program authorized under RCRA Subtitle C, 42 U.S.C. §§6921 – 6939 (g). Effective January 30, 1986, the PaHWMR was authorized by the EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A and thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). *See 51 Fed.Reg. 1791* (January 15, 1986), *65 Fed. Reg. 57734* (September 26, 2000), *69 Fed. Reg. 2674* (January 20, 2004) and *74 Fed. Reg. 19453* (April 29, 2009). The PaHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 1999 Code of Federal Regulations by reference. *See 25 Pa. Code § 260a.3(e)*.

4. Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) - (3) of the Consolidated Rules of Practice, this CAFO simultaneously commences and concludes an administrative proceeding against Respondent by the issuance of a Consent Agreement and Final Order, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a), to resolve alleged violations of RCRA at Respondent's facility located at 50 Koppers Lane Montgomery, Pennsylvania, 17752.

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. For purposes of this proceeding only, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 5, above.
7. For the purposes of this proceeding only, Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

Notice of Action to the Commonwealth of Pennsylvania

11. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated July 28, 2017, EPA notified the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.
12. Upon making a determination that any person has violated or is in violation of any requirement of RCRA Subtitle C, and upon satisfying the notification requirements of RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), RCRA Section 3008(a)(1), 42 U.S.C. § 6928(a)(1), authorizes the Administrator of EPA to issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

13. Respondent is, and was at the time of the violations alleged herein, a corporation of the Commonwealth of Pennsylvania.

14. Respondent is, and at the time of the violations alleged herein, a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903, 25 Pa. Code § 260a.10.
15. Respondent is, and at all times relevant to this Consent Agreement, was the “owner” and “operator” of a “facility”, described in Paragraph 16, below, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
16. The facility referred to in Paragraph 15, above, including all of its associated equipment and structures (hereinafter the “Facility”), is a wood treating facility located at 50 Koppers Lane, Montgomery, Pennsylvania, 17752.
17. Respondent operates the Facility along with 8 other facilities.
18. Respondent was at all times relevant to this CAFO, a large quantity generator of hazardous waste that generated more than 1,000 kilograms of hazardous waste per month at its Facility. Respondent is assigned EPA ID No. PAD056723265.
19. Respondent was at all times relevant to this CAFO, a “generator” of, and has engaged in the “storage” in “containers” at the Facility of materials described below that are “solid wastes” and “hazardous wastes”, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code § 260a.1, which with the exception of the term “storage” and which is defined in 25 Pa. Code § 260a.10.
20. On March 28, 2017, EPA conducted a RCRA Compliance Evaluation Inspection (“RCRA CEI”) at the Facility.
21. On March 28, 2017, “hazardous waste” generated by Respondent, identified below in Paragraph 29 were in “storage” in containers at the Facility.

COUNT I

(Operating a Treatment, Storage or Disposal Facility Without a Permit or Interim Status)

22. The preceding paragraphs are incorporated by reference.
23. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.

24. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(c), provides, in relevant part, a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste without a permit.
25. On March 28, 2017, Respondent accumulated hazardous waste, creosote contaminated absorbent pads and personal protective equipment from the Laboratory, in containers in the Boiler Room which is not at or near the point of generation or under the control of the Laboratory personnel in violation of 25 Pa. Code § 262a.10.
26. 25 Pa. Code § 265a.1, which incorporates by 40 C.F.R. § 265.443(c), requires that the drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.
27. On March 28, 2017, the drip pad at the Facility had two obvious cracks in the concrete and the top layer coating of the drip pad was missing and/or worn away in violation of 25 Pa. Code § 265a., which incorporates by reference 40 C.F.R. § 265.443(c),
28. 25 Pa. Code § 262a.34 incorporates by reference the generator accumulation and permit exemption requirements and conditions of 40 C.F.R. § 262.34(a)(1)(i) and, by further reference, the Container Management requirements of 40 C.F.R. § 265.173(a), which requires that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
29. On March 28, 2017, the Facility did not keep closed the container which was not empty, labeled "hazardous waste" associated with the aerosol puncturing system in the Oil Shed when hazardous waste was not being added or removed in violation of 25 Pa. Code § 262a.34 which requires compliance with 40 C.F.R. § 265.173(a).
30. Respondent's Facility is a hazardous waste treatment, storage or disposal "facility" as that term is defined in 25 Pa. Code Section 260a.10 with respect to the storage of hazardous waste as described above.
31. Respondent does not have, and never had, a hazardous waste treatment or storage permit or interim status pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for the treatment or storage of hazardous waste at the Facility.
32. Respondent was required by 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for the hazardous waste storage activities described in this count.

33. On March 28, 2017, Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit, interim status or a valid exemption to the permit requirement.

COUNT II
(Failure to Maintain Drip Pad)

34. The preceding paragraphs are incorporated by reference.
35. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(c), requires that the drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.
36. On March 28, 2017, the drip pad at the Facility had two obvious cracks in the concrete and the top layer coating of the drip pad was missing and/or worn away in violation of 25 Pa. Code § 264a.1 which incorporates by 40 C.F.R. § 264.573(c).

COUNT III
(Failure to Keep Containers Closed)

37. The preceding paragraphs are incorporated by reference.
38. 25 Pa. Code § 262a.34 incorporates by reference the generator accumulation and permit exemption requirements and conditions of 40 C.F.R. § 262.34(a)(1)(i) and, by further reference, the Container Management requirements of 40 C.F.R. § 265.173(a), which requires that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
39. On March 28, 2017, the Facility did not keep closed the container which was not empty, labeled "hazardous waste" associated with the aerosol puncturing system in the Oil Shed when hazardous waste was not being added or removed in violation of 25 Pa. Code § 262a.34 which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i) and, by further reference, the Container Management requirements of 40 C.F.R. § 265.173(a).

III. CIVIL PENALTIES

40. Respondent agrees to pay a civil penalty in the amount of TWELVE THOUSAND ONE HUNDRED SIXTEEN DOLLARS (\$12,116.00) in settlement of the alleged violations set forth in this CAFO, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of the executed and filed CAFO is mailed or hand-delivered to Respondent.
42. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including the penalty criteria set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g). Complainant also has considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.
43. Payment of the civil penalty as required by Paragraph 40, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 45 - 47, below, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:
- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2018-0106;
 - B. All checks shall be made payable to "**United States Treasury**";
 - C. All payments made by check and sent by regular mail shall be addressed to:

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

Contact: Craig Steffen 513-487-2091

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Cincinnati Finance Center

Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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"

- F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid 202-874-7026 or REX, 1-866-234-5681

- G. On-Line Payment Option: WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.
- H. Point Of Contact regarding payment questions (i.e. how to make payment via wire, ACH, check, pay.gov):

Craig Steffen, 513-487-2091, steffen.craig@epa.gov

Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>.

44. At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or electronic transfer, as appropriate, to:

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Jeffrey S. Nast
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

45. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
46. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
47. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

IV. RESERVATION OF RIGHTS

48. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

V. OTHER APPLICABLE LAWS

49. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VI. CERTIFICATION OF COMPLIANCE

50. Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is currently in compliance with all applicable provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and the federally authorized PaHWMR, for which violations are alleged in this Consent Agreement.

VII. PARTIES BOUND

51. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

VIII. EFFECTIVE DATE

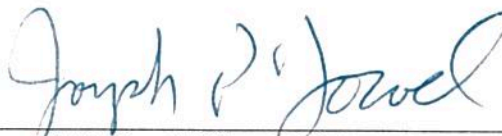
52. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

VIII. EFFECTIVE DATE

53. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent, Koppers, Inc.:


Date: 5/9/18

By: 

Joseph P. Dowd, Vice President
Global Safety, Health, Environmental
and Process Excellence


For Complainant, United States Environmental Protection Agency, Region III:

Date: 5/21/18

By: 
Jeffrey S. Nast
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

5.30.18
Date

By: 
John A. Arnstead
Director
Land and Chemicals Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

IN THE MATTER OF: :
: Docket No. RCRA-03-2018-0106
Koppers, Inc., :
: Respondent, :
: :
Koppers, Inc. :
50 Koppers Lane : U.S. EPA-REGION 3-RHC
Montgomery, PA 17752, : FILED-11JUN2018PM4:15
: Facility. :
: Proceeding Under
: RCRA Section 3008(a) and (g),
: 42 U.S.C. § 6928 (a) and (g), and
: CWA Section 311(b), 33 U.S.C. § 1321(b)
: _____ :
:

FINAL ORDER

Complainant, the Director of the Office of Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Koppers, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. § 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length herein.


Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, inter alia, EPA's October 1990 RCRA Civil Penalty Policy, as revised in June 2003, and the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. Section 6928(a).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the RCRA, 42 U.S.C. § 6928(a) and (g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty payment of **TWELVE THOUSAND ONE HUNDRED SIXTEEN DOLLARS (\$12,116)**, in accordance with the

payment provisions set forth in of the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk.

June 7, 2018
Date:



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

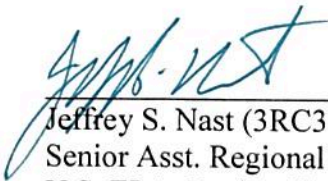
I hereby certify that the original and one copy of the Consent Agreement and Final Order, Docket No. RCRA-03-2018-0106, have been hand delivered and filed with the EPA Region III Regional Hearing Clerk on the date below, and that a copy of the same was sent via UPS expedited delivery to the following:

Joseph Dowd
Koppers, Inc.
50 Koppers Lane
Montgomery, PA 17752
Dowdjp@koppers.com

Kevin Rapsack
Koppers, Inc.
50 Koppers Lane
Montgomery, PA 17752
RapsackKG@koppers.com

6/14/18

Date



Jeffrey S. Nast (3RC30)
Senior Asst. Regional Counsel
U.S. EPA, Region III
(215) 814-2652