



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

October 14, 2021

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Mr. Nathan Hunt
Counsel
Thompson Hine, LLP
Austin Landing I
10050 Innovation Drive, Suite 400
Dayton, Ohio 45342-4934
Nathan.Hunt@ThompsonHine.com

Re: Consent Agreement and Final Order
Facility: AkzoNobel Coatings, Inc.; 300 Sprowl Road, Huron, Ohio
EPA ID No.: OHD002946291
Docket No.: RCRA-05-2022-0002

Dear Mr. Hunt:

Attached, please find a signed, fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The CAFO was filed on October 14, 2021, with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$97,170 in the manner prescribed in paragraphs 75-80 of the CAFO, and reference all checks with the docket number RCRA-05-2022-0002. Your payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions or concerns regarding this matter, please contact Brenda Whitney, of my staff, at whitney.brenda@epa.gov or 312-353-4796.

Sincerely,

Julie Morris
Digitally signed by Julie Morris
Date: 2021.10.06 10:24:10 -05'00'

Julie Morris, Chief
Compliance Section 2

Attachment

cc: Mitchell Mathews, Ohio EPA (mitchell.mathews@epa.ohio.gov)

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

11. U.S. EPA promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste pursuant to Sections 3001 – 3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

13. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e), or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Effective June 30, 1989, U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), 54 Fed. Reg. 27170 (June 28, 1989).

15. U.S. EPA authorized the State of Ohio's revisions to its hazardous waste management program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). 83 Fed. Reg. 5948 (February 12, 2018).

16. On October 5, 2020, the State of Ohio promulgated revised and renumbered hazardous waste management program rules to correspond to the applicable federal regulations at 40 C.F.R. Parts 260 through 279.

17. However, U.S. EPA has not granted to the State of Ohio interim or final authorization to implement those revised and renumbered hazardous waste management program rules, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b).

18. Therefore, U.S. EPA shall enforce in Ohio the existing authorized hazardous waste storage operating requirements until it authorizes Ohio's promulgated and renumbered rules.

19. U.S. EPA promulgated the federal requirements of 40 C.F.R. §§ 265.1050 through 265.1064, pursuant to HSWA authority. 55 Fed Reg 25454-519 (December 21, 1990).

20. U.S. EPA promulgated the Federal requirements of 40 C.F.R. §§ 265.1080 through 265.1090, pursuant to HSWA authority. 59 Fed. Reg. 62896-953 (December 6, 1996).

21. U.S. EPA is authorized to carry out Federal requirements promulgated under HSWA in an authorized state that has not received final or interim U.S. EPA authorization to implement its state's proposed corresponding state rules, pursuant to 40 C.F.R. § 271.3(b)(2).

22. Therefore, U.S. EPA retains the sole authority to enforce in Ohio the hazardous waste storage operating requirements of 40 C.F.R. §§ 265.1050-265.1064 and §§ 265.1080-1090.

23. U.S. EPA also retains sole authority in an authorized state to issue or deny permits for those portions of permits affected by the requirements and prohibitions established by HSWA, pursuant to 40 C.F.R. § 271.3(b)(3), until the authorized state program is revised to reflect the amendments made by HSWA, and such program revisions receive final or interim U.S. EPA authorization.

24. Generally, an owner or operator of a facility that stores hazardous waste must obtain a RCRA Hazardous Waste Storage Permit (RCRA Permit). OAC Rules 3745-50-40 through 3745-235 and 40 C.F.R. Part 270. 42 U.S.C. § 6925 and 40 C.F.R. § 270(c).

25. An owner or operator of a facility who is also a generator of hazardous waste, may qualify for a conditional exemption from the RCRA Permit requirements of OAC Rule 3745-50-40 to 3745-50-235 and 40 C.F.R. Part 270, as well as from the RCRA Storage Operation requirements of OAC Rules 3745-54 through 57, 3745-65 through 69, 3745-205 and 3745-256, and 40 C.F.R. Parts 264 and 265, for its generated wastes, if it complies with all applicable conditions for such an exemption, where said requirements are not themselves incorporated into conditions. OAC Rule 3745-52-34(A) and 40 C.F.R. §§ 270.1(c)(2)(i) and 260.14 – 262.17.

26. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$102,638 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015 and was assessed on or after December 23, 2020, pursuant to Section 3008(a)

of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

27. Prior to Respondent, the Glidden Company owned and operated the business at 300 Sprowl Road, Huron, Ohio.

28. The Glidden Company operated the business with North American Industrial Classification System (NAICS) Code Nos. 325211 (Plastics Material and Resin Manufacturing) and 325511 (Paint and Coating Manufacturer).

29. On or before November 18, 1980, the Glidden Company generated and stored hazardous waste at the business then shipped it to a second location.

30. On or about November 18, 1980, the Glidden Company submitted to U.S. EPA and the State of Ohio a Hazardous Waste Notification and Part A Permit Application which demonstrated that its business and facility was a generator of hazardous waste.

31. Therefore, the Glidden Company's business and facility was an "Existing Hazardous Waste Management Facility or Existing Facility (EHWMF)," as that term is defined by OAC Rule 3745-50-10(A)(40) and 40 C.F.R. § 260.10.

32. From at least 2015 through 2020 Respondent was a corporation.

33. Therefore, Respondent was a "person" as defined by OAC Rule 3745-50-10(A)(98) and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

34. Prior to 2015 Respondent purchased the Glidden Company's facility which included its EHWMF.

35. From at least February 13, 2015, to February 13, 2020, Respondent owned and operated the business and its EHWMF.

36. Respondent continued to operate the business and the EHWMF with NAICS



Classification Code No. 325211 (Plastics Material and Resin Manufacturing).

37. Respondent used volatile organic solvents and other materials to manufacture coatings and resins and to clean equipment.

38. Respondent produced unwanted used volatile organic solvents.

39. Therefore, Respondent's unwanted used volatile organic solvents were "waste," as that term is defined under OAC Rules 3745-50-10(A)(153), 3745-51-02.

40. Therefore, Respondent's unwanted used volatile organic solvents were also "solid waste" as that term is defined under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

41. Respondent characterized its waste and solid waste as "hazardous waste," as that term is defined under OAC Rules 3745-50-10(A)(56), 3745-51-03, and Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

42. Therefore, Respondent was a "generator" of hazardous waste as that term is defined under OAC Rule 3745-50-10(A)(53) and 40 C.F.R. § 260.10.

43. Respondent held its hazardous waste in drums, totes, tanker trucks, and above-ground storage tanks, for temporary periods, then provided it to a commercial hazardous waste transporter for disposal.

44. Therefore, Respondent held its hazardous waste in "storage" as that term is defined under OAC Rule 3745-50-10(A)(122) and 40 C.F.R. § 260.10.

45. Therefore, Respondent stored hazardous waste in "containers" and "tank systems" as those terms are defined under OAC Rules 3745-50-10(A)(19) and (126), and 40 C.F.R. §260.10.

46. Respondent's EHWMF included at least one building structure and equipment for treating storing or disposing of hazardous waste.

47. Therefore, Respondent's operation was a "facility" as defined under OAC Rule 3745-50-10(A)(46)(a) and 40 C.F.R. § 260.10, ("the Facility").

48. Therefore, Respondent was an "operator" or "owner," of the Facility as those terms are defined under OAC Rule 3745-50-10(A)(93) and (94), and 40 C.F.R. § 260.10.

49. However, Respondent did not have a RCRA Permit.

50. From February 10 - 13, 2020, U.S. EPA conducted a Compliance Evaluation Inspection of the Respondent.

51. On June 24, 2020, U.S. EPA issued to Respondent via e-mail a Notice of Potential Violations and Area of Concern Letter, dated June 22, 2020, (Notice), alleging certain violations of RCRA it discovered at the Facility during the Inspection.

52. On July 23, 2020, September 4, 2020, September 11, 2020, and December 8, 2020, Respondent issued to U.S. EPA via e-mail its written responses to U.S. EPA's Notice.

Count 1
Tank Systems
OAC Rule 3745-66

53. Complainant incorporates paragraphs 1 through 52 of this CAFO as though set forth in this paragraph.

Solvent Sump and Reducer Tanks

54. Respondent failed to obtain a written assessment, reviewed and certified by a qualified professional engineer, attesting that its Solvent Sump and Reducer Tanks had sufficient structural integrity and were acceptable for storing and treating hazardous waste. OAC Rule 3745-66-92(A).

55. Respondent failed to use an independent qualified installation inspector or a qualified Professional Engineer to inspect the Solvent Sump and Reducer Tanks or components

in use for: (1) weld breaks; (2) punctures; (3) scrapes of protective coating; (4) cracks; (5) corrosion; (6) and other structural damage or inadequate construction or installation. OAC Rule 3745-66-92(B).

56. Respondent failed to test the Solvent Sump and Reducer Tanks for tightness prior to being covered, enclosed, or placed in use. OAC Rule 3745-66-92(D).

57. Respondent failed to ensure that equipment ancillary to the Solvent Sump and Reducer Tanks was supported and protected against physical damage and excessive stress due to settlement, vibration, expansion or contraction. OAC Rule 3745-66-92(E).

58. Respondent failed to obtain and keep on file at the facility, written statements by those persons required to certify the design of the Solvent Sump and Reducer Tanks, and to supervise the installation of the tank systems, in accordance with the applicable requirements of OAC Rule 3745-66-92(B) - (F). OAC Rule 3745-66-92(G).

Reducer Tanks

59. Respondent failed to provide adequate secondary containment for the Reducer Tanks in order to prevent the release of hazardous waste or hazardous constituents to the environment. OAC Rule 3745-66-93.

60. Respondent failed to inspect, at least once per operating day, data gathered from leak detection equipment, overflow/spill control equipment, the above-ground portions of the Reducer Tanks, and the construction materials and the area immediately surrounding the Reducer Tanks. OAC Rule 3745-66-95(A) and (B).

Tank T-201

61. Respondent failed to provide secondary containment in order to prevent the release of hazardous waste or hazardous constituents to the environment for equipment that was

ancillary to Tank T-201 and did not inspect the ancillary equipment daily. OAC Rules 3745-66-93(B) and (C).

62. Accordingly, Respondent violated OAC Rules 3745-66-92, 3745-66-93, and 3745-66-95.

Count 2
Air Emission Standards for Equipment Leaks
40 C.F.R. Part 265, Subpart BB

63. Complainant incorporates paragraphs 1 through 52 of this CAFO as though set forth in this paragraph.

64. Respondent failed to monitor monthly each pump in light liquid service to detect leaks by the methods specified in 40 C.F.R. § 265.1063(b). 40 C.F.R. § 265.1052(a)(1).

65. Respondent failed to conduct monthly visual checks for liquids dripping from pump seals. 40 C.F.R. § 265.1052(a)(2).

66. Respondent failed to monthly monitor each valve in gas/vapor or light liquid service to detect leaks by the methods specified in 40 C.F.R. § 265.1063(b). 40 C.F.R. § 265.1057(a).

67. Respondent failed to generate records required under 40 C.F.R. Part 265, Subpart BB. 40 C.F.R. § 265.1064(a).

68. Therefore, Respondent violated 40 C.F.R. Part 265, Subpart BB, enumerated from 40 C.F.R. §§ 265.1050 through 265.1064 (40 C.F.R. §262.17(a)(1)(i)) and Section 3005 of RCRA, 42 U.S.C. § 6925.

Count 3
Air Emissions Standards for Tanks and Containers
40 C.F.R. Part 265, Subpart CC

69. Complainant incorporates paragraphs 1 through 52 of this CAFO as though set forth in this paragraph.

70. Respondent failed to determine the average volatile organic (VO) concentration of a hazardous waste at the point of waste origination. 40 C.F.R. § 265.1084(a).

71. Respondent failed to accurately determine the maximum organic vapor pressure of a hazardous waste that is stored in a hazardous waste tank storage system. 40 C.F.R. § 265.1084(c).

72. Respondent failed to transfer hazardous waste into Level 2 containers (tanker trucks) in a manner to minimize exposure of hazardous waste to the atmosphere. 40 C.F.R. § 265.1087(d)(2).

73. Respondent failed to maintain records required under 40 C.F.R. Part 265, Subpart CC. 40 C.F.R. § 265.1090(a).

74. Therefore, Respondent violated 40 C.F.R. Part 265, Subpart CC, enumerated from 40 C.F.R. §§ 265.1080 to 265.1091 (40 C.F.R. §262.17(a)(1)(i)) and Section 3005 of RCRA, 42 U.S.C. § 6925.

Civil Penalty

75. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$97,170. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

76. Within 30 days of the effective date of this CAFO, Respondent must pay a \$97,170 civil penalty for the RCRA violations by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

77. Within 30 days of the effective date of this CAFO, Respondent must provide a copy of its completed ACH electronic funds transfer, including Respondent's name, the case title and the case docket number, to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
Whitehead.LaDawn@epa.gov;

Brenda Whitney
Land Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
Whitney.Brenda@epa.gov and R5LEECAB@epa.gov; and,

Jeffery M. Trevino
Office of Regional Counsel
U.S. EPA, Region 5
Trevino.Jeffery@epa.gov.

78. This civil penalty is not deductible for federal tax purposes.

79. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

80. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more

than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

81. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: trevino.jeffery@epa.gov (for Complainant): and, nathan.hunt@thompsonhine.com (for Respondent).

82. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO.

83. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

84. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

85. Respondent certifies that it is complying fully with the statutory and regulatory citations subject to this CAFO.

86. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

87. The terms of this CAFO bind Respondent, its successors, and assigns.

88. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

89. Each party agrees to bear its own costs and attorney's fees in this action.

90. This CAFO constitutes the entire agreement between the parties.


Akzo Nobel Coatings, Inc., Respondent

27 September 2021
Date



John Griffin
President


27 September 2021
Date



Peter Drucker
Legal Director North America and Global Litigation

United States Environmental Protection Agency, Complainant

10/13/2021
Date

**Harris,
Michael**


Digitally signed by Harris,
Michael
Date: 2021.10.13 12:25:54
-05'00'
Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division



In the Matter of: Akzo Nobel Coatings, Inc.
Docket No. RCRA-05-2022-0002

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2021.10.14 14:20:42
-05'00'

Date

Ann L. Coyle
Regional Judicial Officer
Region 5
United States Environmental Protection Agency

In the matter of: AkzoNobel Coatings, Inc.
Docket Number: RCRA-05-2022-0002

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on October 14, 2021, this day in the following manner to the addressees:

Copy by email to Respondent's Representative: (Delivery Receipt Requested)	Mr. Nathan Hunt Counsel Thompson Hine, LLP Austin Landing I 10050 Innovation Drive, Suite 400 Dayton, Ohio 45342-4934 Nathan.Hunt@ThompsonHine.com
Copy by email to Attorney for Complainant:	Jeffery Trevino trevino.jeffery@epa.gov
Copy by email to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 5