## EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

**TO BE FILLED OUT BY ORIGINATING OFFICE:**
**(Attach a copy of the final order and transmittal letter to Defendant/Respondent)**

This form was originated by: L. RAMALHO (*Name of Contact person*) 3/23/01 (*Date*)

in the ORC (*Office*) at x2691 (*Phone number*)

____ Non-SF Jud. Order/Consent Decree. DOJ COLLECTS

✓ Administrative Order/ Consent Agreement FMD COLLECTS PAYMENT

____ SF Jud. Order/Consent Decree. FMD COLLECTS

____ This is an original debt

____ This is a modification

Name of Person and/or Company/Municipality making the payment: Sherwin-Williams Company

The Total Dollar Amount of Receivable 27,470.— (If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-05-2001-~~0117~~ 0118

The Site-Specific Superfund Acct. Number ____

The Designated Regional/HQ Program Office ____

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number ____

If you have any questions call: ____ (*Name of Contact*) ____ (*Date*)

in the Financial Management Office, phone number: ____

**JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:**

1. Rosemarie Pacheco
   Environmental Enforcement Section
   Lands Division, Room 130044
   1425 New York Avenue, N.W.
   Washington, D.C. 20005
2. Originating Office (ORC)
3. Designated Program Office

**ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:**

1. Originating Office
3. Regional Hearing Clerk
2. Designated Program Office
3. Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

**FIRST CLASS MAIL**

March 30, 2011

Bryson Lehman
U.S. Environmental Protection Agency
Cincinnati Finance Center
26 W. MLK Drive
Cincinnati, OH 45268

Re: ***Accounts Receivable***
**Consent Agreement and Final Order**
**EPA Docket No. RCRA-03-2011-0118**

Dear Mr. Lehman:

Enclosed please find a true and correct copy of the Consent Agreement and Final Order, and the Enforcement Accounts Receivable Control Number Forms (EARCNF) filed with the Regional Hearing Clerk today in settlement of the above referenced subject matters.

Should you have any question or require further information, please feel free to call me at (215) 814-2681.

Sincerely,

Louis F. Ramalho
Sr. Asst. Regional Counsel

Enclosures

cc: Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III

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

| | | |
|---|---|---|
| **In Re:** | ) | |
| | ) | |
| **Sherwin-Williams Company** | ) | |
| **101 W. Prospect Avenue** | ) | **Docket No. RCRA-03-2011-0118** |
| **Cleveland, OH 44115** | ) | |
| | ) | |
| **RESPONDENT,** | ) | **Proceeding Under Section** |
| | ) | **3008(a) and (g) of the** |
| **Sherwin-Williams Company** | ) | **Resource Conservation and** |
| **Seaguard Division** | ) | **Recovery Act, as amended,** |
| **3560 Elm Avenue** | ) | **42 U.S.C. § 6928(a) and (g)** |
| **Portsmouth, VA 23704** | ) | |
| **EPA ID. #VAR000002451** | ) | |
| | ) | |
| **FACILITY.** | ) | |

# CONSENT AGREEMENT

## I. PRELIMINARY STATEMENT

This Consent Agreement (or "CA") is entered into by the Director of the Land and Chemicals, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and Sherwin-Williams Company ("Sherwin-Williams" or "Respondent"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as 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 or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

The Commonwealth of Virginia ("Virginia") has received federal authorization to administer a Hazardous Waste Management Program (the "Virginia Hazardous Waste Management Program") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The Virginia Hazardous Waste Management Regulations (or "VaHWMR"), as codified at VaHWMR §§ 1.0 *et seq.* (1984), were federally authorized, effective December 18, 1984 (49 *Fed. Reg.* 47391 (December 4, 1984)), by EPA

pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, and subsequently were re-authorized effective: August 13, 1993 (58 *Fed. Reg.* 32885 (June 14, 1993)); September 29, 2000 (65 *Fed. Reg.* 46607 (July 31, 2000)); and June 20, 2003 (68 *Fed. Reg.* 36925 (June 20, 2003)). The VaHWMR incorporate, with certain exceptions, definitions and adopt specific provisions of Title 40 of the Code of Federal Regulations (in effect on July 1, 2001) by reference. *See* 9 VAC 20-60-14, -18 and -260 through - 279. This CA and the accompanying Final Order (collectively "CAFO") address violations by Respondent of RCRA and of the federally authorized Virginia Hazardous Waste Management Program.

The federally authorized provisions of the Virginia Hazardous Waste Management Program are requirements of RCRA Subtitle C and, accordingly, are enforceable by EPA pursuant to Section 3008(a) of RCRA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondent is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally authorized VaHWMR requirements promulgated thereunder, at its paint manufacturing facility located at 3560 Elm Avenue, Portsmouth, Virginia (the "Facility").

Pursuant to Section 22.13(b) of the *Consolidated Rules of Practice*, this CAFO simultaneously commences and concludes an administrative proceeding against Respondent, brought under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and resolves alleged violations of RCRA, and of the federally authorized VaHWMR requirements promulgated thereunder, at the Respondent's Facility.

In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has notified the Commonwealth of Virginia, through the Virginia Department of Environmental Quality ("VaDEQ"), of EPA's intent simultaneously to commence and conclude this action by entering into a CAFO with Respondent that resolves the violations alleged herein.

## II. GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, immediately above.

3. For purposes of this proceeding only, Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.

4. For the 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.

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

6. Respondent shall bear its own costs and attorney's fees.

7. Respondent certifies to EPA, to the best of its knowledge and belief, that it is presently in compliance, at the Facility, with all applicable provisions of the VaHWMR and of the federally authorized Virginia Hazardous Waste Management Program requirements that are referenced herein.

8. The provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors and assigns.

9. 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; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, or any regulations promulgated and/or authorized thereunder.

## III. ALLEGATIONS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following facts and conclusions of law:

a. Respondent is an Ohio corporation and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), and as defined in 40 C.F.R. § 260.10 and incorporated by reference in 9 VAC 20-60-260.

b. Respondent is, and has been at all times relevant to this CA, the "owner" and "operator" of the Facility identified above, and further described below, as those terms are defined in 40 C.F.R. § 260.10 and in 9 VAC 20-60-260, which incorporates by reference 40 C.F.R. § 260.10.

c. The Respondent's Facility, located at 3560 Elm Avenue, Portsmouth, Virginia, is a custom manufacturer of marine paint and other coatings, where business activities typically include the use of special resins and pigments, and the use of solvents for the cleaning of mixing tanks.

d. Respondent is assigned the NAICS code: 325510.

e. On or about February 26, 1998, Respondent submitted to EPA a Notification of Hazardous Waste Activity ("Notification") for the Facility, pursuant to Section

3010 of RCRA, 42 U.S.C. § 6930, identifying the Facility as a large quantity generator hazardous waste. The Facility was assigned EPA ID No. VAR000002451.

f. Respondent is and, at all times relevant to this CAFO, has been a "generator" of, and has engaged in the "storage" at the Facility of materials described below that are "solid wastes" and "hazardous waste", as those terms are defined in 40 C.F.R. § 260.10. and in 9 VAC 20-60-260, which incorporates by reference 40 C.F.R. § 260.10.

g. Respondent generates waste paint-related materials that bear the following hazardous waste codes: D001, D035, F003, and F005.

h. On May 5, 2010, a duly authorized representative of EPA conducted a compliance evaluation inspection (the "Inspection") at the Facility to assess the Respondent's compliance with federally authorized VaHWMR requirements.

i. On the basis of the Facility Inspection and a review of information provided by Respondent on May 28, 2010 and August 31, 2010 in response to the Inspection, EPA determined that Respondent violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally authorized VaHWMR requirements promulgated thereunder.

## COUNT I
## (*Operating Without a Permit*)

11. The allegations of Paragraphs 1 through 10, above, are incorporated herein by reference as though fully set forth at length.

12. 9 VAC 20-60-270, 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), 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.

13. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), provides, in pertinent part and with exceptions not herein applicable, that:

a. a generator who generates greater that 1,000 kg of hazardous waste in a calendar month may accumulate hazardous waste on-site for 90 days or less without having interim status, provided that:

1. The waste is placed:

(i) In containers and the generator complies with the applicable requirements of [40 C.F.R. Part 265, Subpart I (relating to the use and management of containers)]; and/or

(ii) the waste is placed in tanks and the generator complies with the applicable requirements of [40 C.F.R. Part 265, Subpart J (relating to tank systems)];

2. The date on which each period of accumulation begins is clearly marked and visible for inspection on each container;

3. While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

4. The generator complies with the requirements for owners and operators in 40 C.F.R. Part 265, Subparts C (relating to preparedness and prevention) and D (relating to contingency plan and emergency procedures) and with 40 C.F.R. § 265.16 (relating to personnel training).

14. 9 VAC 20-60-262, which further incorporates by reference 40 C.F.R. § 262.34(b), additionally provides, in pertinent part and with an exception not herein applicable, that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 9 VAC 20-60-264 and 9 VAC 20-60-265 and the permit requirements of 9 VAC 20-60-270.

15. 9 VAC 20-60-262, which further incorporates by reference 40 C.F.R. § 262.34(c)(1), provides, in pertinent part, that a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 C.F.R. § 261.33(e) 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 or interim status and without complying with 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a) provided the generator:

i. Complies with specified provisions of 40 C.F.R. Part 265, Subpart I (relating to the use and management of containers), specifically, 40 C.F.R. §§ 265.171, .172., and .173(a); and

ii. Marks the containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

16. 9 VAC 20-60-265, which incorporates by reference 40 C.F.R. Part 265, Subpart C (including, specifically, 40 C.F.R. § 265.35) requires, in pertinent part, that the owner or operator of a facility must maintain aisle space to allow the unobstructed movement of

personnel, fire protection equipment, and decontamination equipment to any area of facility operation in an emergency.

17. 9 VAC 20-60-265, which incorporates by reference 40 C.F.R. Part 265, Subpart I (including, specifically, 40 C.F.R. § 265.173(a)) requires, in pertinent part, that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

18. From November 10, 2008 until February 19, 2009, Respondent stored at the Facility, for periods in excess of 90 days, two 55-gallon drums of waste paint related materials containing D001, D035, F003, and F005 hazardous wastes.

19. At the time of the May 5, 2010 Facility Inspection, Respondent had in storage in the production area of the Facility a 5 gallon container holding hazardous waste F003 that was open at a time when it was not necessary to add or remove hazardous waste from such container.

20. At the time of the May 5, 2010 Facility Inspection, Respondent failed to clearly mark the following four (4) containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers: (1) a 5 gallon container holding hazardous wastes F003 and/or F005 in the production area of the Facility; (2) a 5 gallon container holding waste paint related materials (hazardous waste codes D001 and D035) in the main laboratory at the Facility; (3) 1 gallon container holding hazardous waste F003 and/or F005 in the laboratory annex room at the Facility; and (4) 1 gallon container holding waste paint related materials (hazardous waste codes D001 and D035) in the laboratory annex room at the Facility.

21. At the time of the May 5, 2010 Facility Inspection, Respondent failed to clearly mark and make visible for inspection the date upon which each period of hazardous waste accumulation had begun on a 55 gallon hazardous waste container holding waste paint related materials (spent filters; hazardous waste codes D001 and D035) in the production area at the Facility.

22. At the time of the May 5, 2010 Facility Inspection, Respondent failed to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, and decontamination equipment to the less than 90 day hazardous waste storage area of Facility.

23. 9 VAC 20-60-265, which incorporates by reference the requirements set forth at 40 C.F.R. § 265.16(a) - (c), requires, in relevant part, that facility personnel must: (a) successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 9 VAC 20-60-265 and 40 C.F.R. Part 265; (b) complete such

program within six months after the date of employment or assignment to a facility; and (c) take part in an annual review of such initial training.

24. At the time of the May 5, 2010 Facility Inspection, Respondent had failed to ensure that one (1) Facility employee, whose duties included Facility emergency coordination and signing hazardous waste manifests for the Facility, successfully completed an annual review of a program of classroom instruction or on-the-job training that would teach him to perform his duties in a way that ensured the Facility's compliance with the requirements of 40 C.F.R. Part 265.

25. Each of the drums and/or containers of hazardous waste identified and referred to in Paragraphs 18 through 21, above, is a "container" as that term is defined in 40 C.F.R. § 260.10 and incorporated by reference in 9 VAC 20-60-260.

26. Respondent failed to qualify for the "less than 90 - day" generator accumulation exemption of 9 VAC 20-60-262, which incorporates by reference each of the requirements of 40 C.F.R.§§ 262.34(a)(1), (2), (3) and (4), and the satellite accumulation exemption of 40 C.F.R. § 262.34(c)(1), for the activities and/or units described in Paragraphs 18 through 24, above, by failing to satisfy the conditions for such exemptions, as described in Paragraphs 13 through 17, above.

27. The Facility is a hazardous waste treatment, storage or disposal "facility", as that term is defined by 9 VAC 20-60-260, which incorporates by reference 40 C.F.R. § 260.10, with respect to the activities and units described in Paragraphs 18 through 21, above.

28 Respondent does not have, and did not have at the time of the violations alleged herein, a permit or interim status pursuant to 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for the storage of hazardous waste at the Facility as described in Paragraphs 18 through 21, above.

29. Respondent was required by 9 VAC 20-60-270, 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 activities and/or units described in Paragraphs 18 through 21, above.

30. Respondent violated 9 VAC 20-60-270, 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 or interim status.

## COUNT II

***(Failure to Keep Containers of Hazardous Waste Closed During Storage)***

31. The allegations of Paragraphs 1 through 30, above, are incorporated herein by reference as though fully set forth at length.

32. 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. Part 264, Subpart I, including the requirements of 40 C.F.R. § 264.173(a), requires, in relevant part, that "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

33. At the time of the May 5, 2010 Facility Inspection, Respondent failed to manage a five (5) gallon container of hazardous waste at the Facility previously identified in Paragraph 19, above, in accordance with the 9 VAC 20-60-264 requirement that a container of hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.

34. Respondent violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by failing to keep containers of hazardous waste closed during storage, except when it is necessary to add or remove waste.

**COUNT III**
***(Failure to Maintain Aisle Space)***

35. The allegations of Paragraphs 1 through 34, above, are incorporated herein by reference as though fully set forth at length.

36. 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. Part 264, Subpart C (including, specifically, 40 C.F.R. § 264.35) requires, in pertinent part, that the owner or operator of a facility must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, and decontamination equipment to any area of facility operation in an emergency.

37. At the time of the May 5, 2010 Facility Inspection, Respondent failed to maintain adequate aisle space for eight (8) drums to allow the unobstructed movement of personnel, fire protection equipment, and decontamination equipment to the less than 90 day hazardous waste storage area of the Facility.

38. Respondent violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.35, by failing to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, and decontamination equipment to the less than 90 day hazardous waste storage area of Facility.

**COUNT IV**
***(Failure to Provide Required Personnel Training)***

39. The allegations of Paragraphs 1 through 38, above, are incorporated herein by reference as though fully set forth at length.

40. 9 VAC 20-60-264, which incorporates by reference the requirements set forth at 40 C.F.R. § 264.16(a) - (c), requires, in relevant part, that facility personnel must: (a) successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 264; (b) complete such program within six months after the date of employment or assignment to a facility; and (c) take part in an annual review of such initial training.

41. At the time of the May 5, 2010 Facility Inspection, Respondent had failed to ensure that one (1) Facility employee, whose duties included Facility emergency coordination and signing hazardous waste manifests for the Facility, successfully completed an annual review of a program of classroom instruction or on-the-job training that would teach him to perform his duties in a way that ensured the Facility's compliance with the requirements of 40 C.F.R. Part 265.

42. Respondent violated 9 VAC 20-60-264, which incorporates by reference the requirements of 40 C.F.R. § 264.16(a) - (c), by failing to ensure that a Facility personnel successfully completed an annual review of a program of classroom instruction or on-the-job training that would teach him to perform his duties in a way that ensured the Facility's compliance with the requirements of 40 C.F.R. Part 265.

**COUNT V**
***(Failure to Perform a Hazardous Waste Determination)***

43. The allegations of Paragraphs 1 through 42, above, are incorporated herein by reference as though fully set forth at length.

44. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.11, provides that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste using the following method:

(i) He should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4 .

(ii) He must then determine if the waste is listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261.

(iii) If the waste is not listed in Subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in Subpart C of 40 C.F.R. Part 261 by either:

(A) testing the waste, or
(B) applying knowledge of the hazardous characteristic of the waste.

45. Respondent generates used aerosol cans that contained products used for cleaning, painting and other operations at the Facility. The contents of the used aerosol cans meet the hazardous waste characteristic of ignitability (D001).

46. The waste referred to in Paragraph 45, above, is and was "solid waste" as this term is defined in 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. 261.2, with exception not relevant hereto.

47. According to Facility personnel at the time of the May 5, 2010 Facility Inspection, Respondent disposed of the "solid wastes" referred to in Paragraph 45, above, in a municipal landfill that was not permitted to receive hazardous waste.

48. Respondent failed to determine whether its "solid wastes" referred to in Paragraph 45, above, were hazardous waste by applying knowledge of the hazardous characteristics of the waste or by testing the waste as provided in 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.11.

49. Respondent violated 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.11, by failing to perform a hazardous waste determination for the solid wastes generated at the Facility that were disposed in a municipal landfill.

**COUNT VI**

(Improper management of universal waste)

50. The allegations of Paragraphs 1 through 49, above, are incorporated herein by reference as though fully set forth at length.

51. 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.13(d)(1), provides, in pertinent part, that a small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment by containing any lamps in containers or packages that are structurally sound. Such containers must remain closed.

52. 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.14(e) provides, in pertinent part, that a small quantity handler of universal waste lamps must label or mark clearly each lamp or a container or package in which such lamps are contained with the words "Universal Waste-Lamp(s)" or "Used Lamp(s)."

53. 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.15(a), provides, in pertinent part and with exceptions not herein applicable, that a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler.

54. At the time of the May 5, 2010 Facility Inspection, Respondent was storing at the Facility open containers of used and discarded fluorescent lamps that were not labeled with the words "Universal Waste-Lamp(s)" or "Used Lamp(s).

55. At the time of the May 5, 2010 Facility Inspection, Respondent was storing at the Facility two containers of used and discarded fluorescent lamps marked with accumulation start dates of November 14, 2008 and February 10, 2009. Such containers had been accumulated by Respondent at the Facility for more than one year.

56. Respondent was the "generator" of the used and discarded fluorescent "lamps" described above and such lamps are and were "universal waste" as these terms are defined in 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.9.

57. Respondent is and was, at the time of the violations alleged herein, a "small quantity handler of universal waste" as this term is defined in 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.9, with respect to the lamps described above.

58. Based on the activities described in Paragraphs 54 through 57, above, Respondent violated 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. §§ 273.13(d)(1), .14(e), and .15(a), by accumulating universal waste lamps for greater than one year in open containers that were not labeled with the words "Universal Waste-Lamp(s)" or "Used Lamp(s)."

## CIVIL PENALTY

59. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty in the amount of **TWENTY-SEVEN THOUSAND FOUR HUNDRED FORTY DOLLARS** ($27,440.00), 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 this Consent Agreement and Final Order fully executed by all parties. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this Consent Agreement and Final Order, Respondent must pay the entire civil penalty no later than thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.

60. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs 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.

61. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the

Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

62. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a 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.

63. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

64. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), with specific reference to EPA's *RCRA Civil Penalty Policy* (June 2003) ("*Penalty Policy*")

65. a. All payments made by check and sent by U.S Postal Service regular mail shall be addressed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

*The customer service contact for this address may be reached at 513-487-2105*

b. All payments made by check and sent by UPS, FedEx, or overnight mail delivery service (except as noted in section c, below) shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza

Mail Station SL-MO-C2-GL
St. Louis, MO 63101

*The U.S. Bank customer service contact for overnight delivery is 314-418-1028.*

c. All payments made by check in any currency drawn on banks with no branches in the United States shall be addressed for delivery to the following address:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. All payments made by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 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"

*The Federal Reserve customer service contact may be reached at 212-720-5000.*

e. 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

*Customer service contact: John Schmid, at 202-874-7026, or REX at 1-866-234-5681*

f. On-line payment option

WWW.PAY.GOV
Enter "sfo 1.1" in the search field. Open and complete the form.

g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/payment_instructions.htm

66. All payments by Respondent shall include Respondent's full name and address and the EPA Docket Number of this Consent Agreement (RCRA-03-2011-0118).

67. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

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

and

Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

68. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

## V. PARTIES BOUND

69. 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 capacities) 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 Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

## VI. FULL AND FINAL SATISFACTION

70. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for the violations alleged in this CAFO. Nothing in this Consent Agreement requires Respondent to perform any compliance tasks.

## VII. EFFECTIVE DATE

71. The effective date of this Consent Agreement and Final Order 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: Sherwin-Williams Company

Date: 3/18/11 By: _____
Louis E. Stellato
Senior Vice-President, General Counsel,
Secretary

For Complainant: U. S. Environmental Protection Agency, Region III

Date: 3/23/11 By: _____
Louis F. Ramalho
Sr. 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.

3/24/11 By: _____
Date Abraham Ferdas, Director
Land and Chemicals Division

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

| | | |
|---|---|---|
| **In Re:** | ) | |
| | ) | |
| **Sherwin-Williams Company** | ) | |
| **101 W. Prospect Avenue** | ) | **Docket No. RCRA-03-2011-0118** |
| **Cleveland, OH 44115** | ) | |
| | ) | |
| **RESPONDENT,** | ) | **Proceeding Under Section** |
| | ) | **3008(a) and (g) of the** |
| **Sherwin-Williams Company** | ) | **Resource Conservation and** |
| **Seaguard Division** | ) | **Recovery Act, as amended,** |
| **3560 Elm Avenue** | ) | **42 U.S.C. § 6928(a) and (g)** |
| **Portsmouth, VA 23704** | ) | |
| **EPA ID. #VAR000002451** | ) | |
| | ) | |
| **FACILITY.** | ) | |

## FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Sherwin-Williams Company, 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. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

**NOW, THEREFORE, PURSUANT TO** Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **TWENTY-SEVEN THOUSAND FOUR HUNDRED FORTY DOLLARS** ($27,440.00) in accordance with the terms and conditions of the Consent Agreement, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 3/30/11

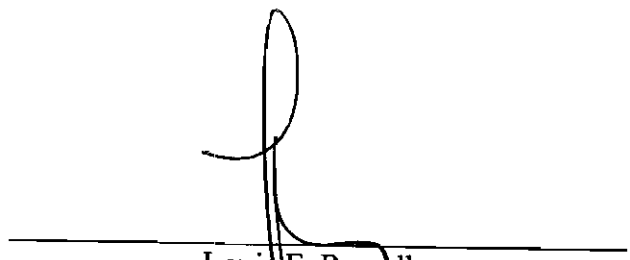
Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, Docket No. **RCRA-03-2011-0118** was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent to the following parties:

Michael S. McMahon, Esq.
McMahon DeGulis llp
The Caxton Building
Suite 650
812 Huron Road
Cleveland, OH 44115

Date 8/30/11



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029