

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

Filed August 3, 2021 @ 9:32 am

USEPA – Region II

Regional Hearing Clerk

In the Matter of:

Polyurethane Specialties Company,
Respondent.

Proceeding under Section 3008 of the Solid
Waste Disposal Act, as amended.

CONSENT AGREEMENT

AND

FINAL ORDER

Docket Number: RCRA-02-2021-7104

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. §§ 6901, *et seq.* (referred to collectively as “RCRA” or the “Act”).

Pursuant to 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. § 22.18(b).

The parties agree that settling this matter by entering into this CA/FO is an appropriate means of resolving the RCRA claims specified herein against Polyurethane Specialties Company (“Respondent” or “PSC”), without litigation. To that end, the parties have met and negotiated this settlement. No adjudicated findings of fact or conclusions of law have been made in either a judicial or administrative forum.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is PSC.
2. PSC is situated at 624 Schuyler Avenue, Lyndhurst, New Jersey 07071.
3. PSC is a corporation organized pursuant to the laws of the State of New Jersey.
4. Respondent is a “person” as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10(1993) (N.J.A.C. 7:26G-4.1(a)).
5. PSC is, and has since at least 1980, been the owner and operator of a manufacturing facility engaged in the business of plastics materials, synthetic resins, and non-vulcanizable elastomers, such as fabric coatings and prepolymers, for various industries.

6. PSC in carrying out its manufacturing activities has been generating, and continues to generate, “hazardous waste,” as defined in 40 C.F.R. § 261.3 as incorporated by reference in N.J.A.C. 7:26G-5.1(a), at its facility.
7. As of November 2019, and prior and subsequent thereto, Respondent has generated and continues to generate 1,000 kilograms (“kgs”) or more of non-acute hazardous waste in a calendar month.
8. Based upon information provided by PSC, PSC is a “large quantity generator” of hazardous waste as that phrase is defined in 40 C.F.R. § 262.34 as incorporated by reference in N.J.A.C. 7:26G-6.1(a).
9. On or about November 19, 2019 and, again, on January 23, 2020, duly designated representatives of EPA conducted an inspection of the Lyndhurst facility, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine PSC’s compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey’s authorized hazardous waste regulations (the “November” and “January” Inspections).
10. On or about June 4, 2020, EPA issued to PSC a combined Notice of Violation (“NOV”) and Request for Information (“IRL”).
11. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed PSC that EPA had identified a number of potential RCRA violations at its facility and requested it to provide a description and documentation of the actions it had taken to correct the violations identified by EPA in that NOV.
12. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part, information and documentation relating to PSC’s handling at its Lyndhurst facility of hazardous waste including the organic hazardous waste subject to the air emission requirements.
13. On or about July 15, 2020, PSC submitted its response to the combined NOV and IRL (“July 15, 2020 Response”).
14. On or about February 3, 2021, EPA sent two follow-up emails to PSC seeking further information regarding its use of a tank (Tank 17) in its polyurethane manufacturing process.
15. On or about March 1, 2021, PSC submitted its two responses to those email requests stating:

To the best of my knowledge, Tank #17 was never a part of a system from which fresh cleaning solvent mixture was circulated to the production area for cleaning vessels and other equipment. Even though, fresh solvent was not used in Tank#17, but spent rinse solvent mixture was available for circulation from tank #17 to the vessels in an emergency if needed for cleaning vessels etc. For example, if cleaning solvent was not available and vessels needed to be cleaned. I don’t have any recollection if it happened in the past. (Emphasis added)

tank 17 was used to hold spent solvent however as stated the spent solvent could have been used if fresh solvent wasn't available in an emergency basis. tank 17 has now been out of service for over a year.

(Emphasis added)

16. As a result of information obtained during the November Inspection (information from the January Inspection is not germane to the case) and PSC March 1, 2021 responses to EPA's February 3, 2021 emails, EPA representatives determined that Respondent, at the time of the November Inspection had: (1) stored hazardous waste for more than ninety (90) days without having obtained a permit or interim status; (2) failed to monitor one pump in light liquid service; (3) failed to monitor two valves in light liquid service; (4) failed to maintain required records for equipment subject to RCRA Air Emissions Subpart BB requirements; and (5) failed to maintain an external liner around its hazardous waste tank free of cracks or gaps.
17. EPA and PSC had several telephonic conversations or virtual meetings between April 26, 2021 and May 28, 2021 to discuss the determinations described in Paragraph 16, *supra*, and agreed to settle this matter by entering into this Consent Agreement.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional basis for EPA prosecuting this case; (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. PSC shall hereinafter, at its facility, comply with all applicable RCRA requirements relating to the generation, management and disposal off-site of all hazardous waste stored for short time-periods at its Lyndhurst facility including any and all organic hazardous waste air emission standards that are applicable.
2. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is in compliance with all the applicable requirements of RCRA relating to the generation, management and disposal off-site of all hazardous waste stored at its Lyndhurst facility.

3. Respondent hereby certifies, as of the date of its signature to this agreement, that if it decides to recommission Tank #17 to be used as a Manufacturing Process Unit (“MPU”), an engineering schematic signed by professional engineer will be provided to EPA accurately showing how both Tank #16 and Tank #17 will be connected to the polyurethane manufacturing process lines and how organic solvent used to clean-out those process lines will be conveyed to and from those tanks until that organic solvent can no longer be used and must be disposed of as a hazardous waste. If, within three years of signing this agreement, there is any change in how organic solvents will be used to clean the polyurethane process lines and conveyed to and from the MPUs (Tank #16 and Tank #17), Respondent must update the certified engineering schematic to reflect those changes and send the updated certified engineering schematic to EPA within ninety (90) days of making such changes.
4. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect PSC’s obligation to comply with all applicable federal, state and local laws and regulations relating to any generation, management, treatment, storage, transport or offering for transport, or disposal of hazardous waste by the Respondent.
5. PSC shall pay a civil penalty to EPA in the amount of **TWENTY THOUSAND DOLLARS THOUSAND (\$20,000)**. Said amount must be *received* by EPA within thirty (30) days¹ of the date the Regional Administrator of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (said date hereinafter referred to as the “due date”).
6. Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier’s check, certified check, electronically via Fedwire, or online.
 - a. If payment is made by cashier’s check or by certified check, each such check shall be made payable to the “**Treasurer, United States of America,**” and shall be identified with a notation thereon listing the following: ***In re Polyurethane Specialties Company, Docket Number RCRA-02-2021-7104.*** If payment is made by either form of check, such payment shall be mailed to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
 - b. Alternatively, if PSC chooses to make electronic payment via Fedwire, then the following information is to be provided to the remitter bank when such payment is made:
 - i. Amount of payment;
 - ii. SWIFT address: **FRNUS33, 33 Liberty Street, New York, NY 10045;**
 - iii. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**

¹ For purposes of this CA/FO, days shall mean calendar days.
In the Matter of Polyurethane Specialties Company Docket RCRA-02-2021-7104

- iv. Federal Reserve Bank of New York ABA routing number: **021030004**;
- v. Field Tag 4200 of the Fedwire message should read: “**D 68010727 Environmental Protection Agency**”;
- vi. Name: **POLYURETHANE SPECIALTIES COMPANY**
- vii. Case docket number: **RCRA-02-2021-7104**.

c. If Respondent chooses to make on-line payments, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under “EPA Miscellaneous Payments – Cincinnati Finance Center;” and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to Wilk.John@epa.gov *In the Matter of Polyurethane Specialties Company RCRA-02-2021-7104* as the subject line.

7. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.

Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

8. The civil penalty provided for herein constitutes “penalt[ies]” within the meaning of 26 U.S.C. § 162(f) and is not deductible expenditures for purposes of federal or state law.
9. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.16-21(b)(2), performance of Paragraphs 1 and 3, above, of the Consent Agreement is restitution, remediation, or required to come into compliance with the law.
10. PSC consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via electronic mail to the addressee identified in Paragraph 11, below. Receipt of the fully executed CA/FO by said designated representative shall constitute Respondent’s receipt and acceptance of said CA/FO.

11. Any responses, documentation, and other communications submitted in connection with this Consent Agreement shall be e-mailed to:

John Wilk
U.S. Environmental Protection Agency – Region 2
RCRA Compliance Branch
Wilk.John@epa.gov

and

William K. Sawyer
U.S. Environmental Protection Agency – Region 2
Office of Regional Counsel
Sawyer.William@epa.gov

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter by email, including the fully-executed CA/FO and any correspondence related to payment of the penalty, to PSC at the following:

Saifee Balsara
Director of Operations 1
Polyurethane Specialties Company
SaifeeB@yahoo.com

12. This CA/FO is not intended, and shall not be construed, to supersede, pre-empt, negate, invalidate or otherwise affect PSC's obligation to comply with all applicable federal, state, and local laws and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state, or local permit. Payment of the civil penalty in full as provided herein, together with any late payment for interest, shall not waive, extinguish, or otherwise affect PSC's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder at the Lyndhurst facility.
13. Full payment of the penalty amount set forth above (\$20,000) in accordance with the terms herein, as well as any interest or late payment handling charges that accrue, shall only resolve PSC's liability for federal civil penalties for the violations described in paragraph 16, above, of the Findings of Fact and Conclusions of Law. Notwithstanding the above, nothing herein shall affect the authority of EPA or the United States on behalf of EPA to pursue appropriate injunctive or otherwise seek equitable relief or criminal sanctions for any violation(s) of law.
14. Pursuant to 40 C.F.R. § 22.18(b)(2), in entering this Consent Agreement, PSC waives any right it might possess to seek or obtain judicial review under RCRA, the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, or other law that might be applicable. PSC, in entering into this Consent Agreement, waives any right it might have under Section 3008 of RCRA, 42 U.S.C. § 6928, or other applicable law otherwise to seek or obtain an administrative or judicial hearing on the claims set forth in or arising from the above Findings of Fact or Conclusions of Law or on the terms and conditions set forth in this Consent Agreement.

15. This Consent Agreement, and any provision herein, shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
16. EPA's entering into this Consent Agreement is premised upon PSC not having concealed or misrepresented any material fact in any of its written or oral representations to the Agency regarding its activities or actions or those of its corporate predecessor. If any material fact has been misrepresented or concealed, EPA may pursue any options available to it or the United States under the law.
17. Each party shall bear its own costs and fees in connection with this proceeding.
18. This Consent Agreement shall be fully binding upon the parties and their officers, directors, employees, successors and/or assigns.
19. The signatory for PSC certifies that: (a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and (b) he or she is duly and fully authorized to bind PSC to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
20. PSC has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. PSC agrees that this CAFO constitutes the entire agreement between the parties and all terms of settlement are set forth herein.
21. Pursuant to 40 C.F.R. § 22.31(b), the Final Order ratifying this Consent Agreement shall be effective as of the date of filing with the Regional Hearing Clerk of EPA, Region 2.

RESPONDENT: **POLYURETHANE SPECIALTIES COMPANY**

BY: _____
Authorizing Signature

NAME: SAIFEE BALSARA
(PLEASE PRINT)

TITLE: Sr. Chemical Engineer - Dir of Operations

DATE: July 28th 2021

COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

for Dore LaPosta, Director
Division of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: _____

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Polyurethane Specialties Company*, bearing Docket Number RCRA-02-2021-7104. The Consent Agreement, agreed to and entered into by the parties to this matter, is hereby ratified, incorporated herein, and issued as an Order pursuant to Section 3008 of RCRA. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b).

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

DATE: _____

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing Docket Number RCRA-02-2021-7104, in the following manner to the respective addressees below:

By E-mail to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
New York, NY 10007-1866
Maples.Karen@epa.gov

Copy by Email to:

Saifee Balsara
Director of Operations I
Polyurethane Specialties Company
SaifeeB@yahoo.com

Dated: _____, 2021

Yolanda Majette
WTS Branch Secretary