

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

In the matter of)	U.S. EPA Docket No.
)	RCRA-9-2009-00
KOP-COAT, INC.)	
)	CONSENT AGREEMENT AND
EPA ID No. CAD 004 937 793)	FINAL ORDER PURSUANT TO
)	40 CFR SECTIONS 22.13 AND
Respondent.)	22.18
_____)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("CFR") Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Kop-Coat, Inc. ("Kop-Coat" or "Respondent").
2. Respondent owns and operates a facility located at 5431 District Boulevard, Los Angeles, California 90058 (the "Facility"). The Facility's EPA Identification Number is CAD 004 937 793. Respondent is a manufacturer of specialty, industrial, military coatings and epoxy resin overlay. Respondent serves the construction, industrial, truck refinishing, military, and aerospace trades. Respondent states that it has ceased manufacturing operations at this Facility.
3. This Consent Agreement and Final Order pursuant to 40 CFR §§ 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent: (1) failed to obtain a permit or grant of interim status for storage of hazardous waste for more than 90-days in violation of 22 CCR § 66270.1(c) [see also 40 CFR § 270.1(c)]; (2) failed to provide required equipment in violation of 22 CCR § 66265.32 [see also 40 CFR § 265.32]; (3) failed to keep containers closed during storage in violation of 22 CCR § 66265.173(a) [see also 40 CFR § 265.173(a)]; (4) failed to perform weekly inspections in violation of 22 CCR § 66265.174 [see also 40 CFR § 265.174]; (5) stored hazardous, ignitable waste less than 50 feet from the property line in violation of 22 CCR § 66265.176 [see also 40 CFR § 265.176]; (6) failed to meet air

emission standards for tanks and containers in violation of 22 CCR § 66265 Article 28.5 [see also 40 CFR § 265 Subpart CC]; (7) failed to assess the integrity of an existing tank system in violation of 22 CCR § 66265.191 [see also 40 CFR 265.191]; (8) failed to have leak detection systems and secondary containment for tanks in violation of 22 CCR § 66265.193 [see also 40 CFR §265.193]; (9) failed to follow tank operating requirements for spill controls and prevention in violation of CCR § 66265.194(b) [see also 40 CFR § 265.194(b)]; (10) failed to provide and maintain personnel training in violation of 22 CCR § 66265.16 [see also 40 CFR § 265.16]; and (11) failed to make arrangements with local authorities and include all required provisions of the contingency plan, including descriptions and capabilities of the Facility's emergency equipment in violation of 22 CCR § 66265.52(c) and (e) [see also 40 CFR § 265.52(c) and (e)]. These are all in violation of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto.¹ This CA/FO does not require any injunctive relief beyond payment of a penalty pursuant to Section G, or stipulated penalties, as appropriate, pursuant to Section H.

B. JURISDICTION

4. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 CFR Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated there under at Title 22, Division 4.5 of the California Code of Regulations, 22 CCR § 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.
5. Respondent is a "person," as defined in 22 CCR § 66260.10 [see also 40 CFR § 260.10].
6. Respondent is the "operator" of a facility as defined in 22 CCR § 66260.10 [see also 40 CFR § 260.10].
7. Respondent's hazardous waste manifests indicate it is a large quantity "generator" of hazardous waste as defined in 22 CCR § 66260.10 [see also 40 CFR § 260.10].
8. Respondent is or has been engaged in "storage" of hazardous waste as defined in 22 CCR § 66260.10 [see also 40 CFR § 260.10].

¹ All citations to the "CCR" refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States on August 1, 1992 (*see* 57 FR 32726, July 23, 1992) and September 26, 2001 (66 FR 49118, September 26, 2001). Corresponding federal citations are provided in brackets.

9. Respondent generates and accumulates, or has generated and accumulated, materials that are "wastes" as defined in 22 CCR §§ 66260.10 and 66261.2 [*see also* 40 CFR §§ 260.10 and 261.2].
10. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in Section 25117 of the California Health & Safety Code and 22 CCR §§ 66260.10 and 66261.3 [*see also* Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 CFR §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, waste paint, waste solvent including acetone and toluene, and used oil.
11. On July 19, 2007 EPA conducted a RCRA Compliance Evaluation Inspection ("CEI") at the Facility. Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated the California Health & Safety Code ("H&SC") Sections 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.
12. Section 3006 of RCRA, 42 U.S.C. § 6926, provides inter alia that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
13. A violation of California's authorized hazardous waste program, found at H&SC Sections 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
15. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has re-delegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT I

(Failure to obtain a permit for storage of hazardous waste)

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were

set forth here in their entirety.

17. Pursuant to 22 CCR § 66270.1(c) [*see also* 40 CFR § 270.1(c)], a generator shall get a permit for storage of hazardous waste for more than 90 days.
18. At the time of the CEI, Respondent did not have a permit for storage of hazardous waste for more than 90 days.
19. Pursuant to 22 CCR § 66262.34(f) [*see also* 40 CFR § 262.34], a generator who accumulates hazardous waste onsite without a permit or grant of interim status shall comply with the following requirements: (1) the date upon which each period of accumulation begins shall be clearly marked and visible for inspection on each container and portable tank; (2) the date the applicable accumulation period begins shall be clearly marked and visible for inspection on each container and tank; and (3) each container and tank used for onsite accumulation of hazardous waste shall be labeled or marked clearly with the words "Hazardous Waste." Additionally, all containers and portable tanks shall be labeled with the following information: (1) composition and physical state of the wastes; (2) statement or statements which call attention to the particular hazardous properties of the waste (e.g., "flammable, reactive," etc.); and (3) name and address of the person producing the waste.
20. At the time of the CEI, Respondent had a 200-gallon tub and two 5-gallon containers that were not labeled with any of the required information, including the accumulation time.
21. Therefore, EPA alleges that Respondent's failure to meet the requirements set forth or referenced by 22 CCR § 66262.34(f) [*see also* 40 CFR § 262.34] subject it to the permit requirements of 22 CCR § 66270.1(c) [*see also* 40 CFR § 270.1(c)]. Therefore, EPA alleges that Respondent stored hazardous waste without a permit in violation of 22 CCR § 66270.1(c) [*see also* 40 CFR § 270.1(c)].

COUNT II

(Failure to provide required equipment)

22. Paragraphs 1 through 21 above are incorporated herein by this reference as if they were set forth here in their entirety.
23. Pursuant to 22 CCR § 66265.32 [*see also* 40 CFR § 265.32], all facilities must be equipped with certain equipment unless none of the hazards posed by the facility's waste could require a particular kind of equipment.
24. At the time of the CEI, the Facility did not have a designated hazardous waste storage area and lacked an internal communications or alarm system capable of providing

immediate emergency instruction, and a device immediately available at the scene of operations, such as a telephone or hand-held two-way radio, capable of summoning emergency assistance from local response departments.

25. Therefore, EPA alleges that Respondent has failed to comply with 22 CCR § 66265.32 [*see also* 40 CFR § 265.32].

COUNT III

(Failure to keep containers closed during storage)

26. Paragraphs 1 through 25 above are incorporated herein by this reference as if they were set forth here in their entirety.
27. Pursuant to 22 CCR § 66265.173(a) [*see also* 40 CFR § 265.173(a)], a container holding hazardous waste shall always be closed during transfer and storage except when it is necessary to add or remove waste.
28. At the time of the CEI, EPA inspectors observed one 200-gallon and two 5-gallon containers storing hazardous waste that were open and waste was not being added or removed at that time.
29. Therefore, EPA alleges that Respondent has failed to comply with 22 CCR § 66265.173(a) [*see also* 40 CFR § 265.173(a)].

COUNT IV

(Failure to perform weekly inspections)

30. Paragraphs 1 through 29 above are incorporated herein by this reference as if they were set forth here in their entirety.
31. Pursuant to 22 CCR § 66265.174, an owner or operator shall inspect areas used for container storage or transfer, at least weekly, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.
32. At the time of the CEI, the Facility representative stated that he was not aware of the requirement to inspect containers weekly and there were no records of weekly inspections.
33. Therefore, EPA alleges that Respondent has failed to comply with 22 CCR § 66265.174 [*see also* 40 CFR § 265.174].

COUNT V

(Storing hazardous, ignitable waste less than 50 feet from the property line)

34. Paragraphs 1 through 33 above are incorporated herein by this reference as if they were set forth here in their entirety.
35. Pursuant to 22 CCR § 66265.176, containers holding ignitable or reactive waste shall be located at least 15 meters (50 feet) from the facility's property line.
36. At the time of the CEI, EPA Investigators observed ignitable waste stored less than 50 feet from the Facility's property line.
37. Therefore, EPA alleges that Respondent has failed to comply with 22 CCR § 66265.176 [*see also* 40 CFR § 265.176].

COUNT VI

(Failure to meet air emission standards for tanks and containers)

38. Paragraphs 1 through 37 above are incorporated herein by this reference as they were set forth herein in their entirety.
39. Pursuant to 22 CCR, Division 4.5, Chapter 15, Article 28.5 (Air Emission Standards for Tanks, Surface Impoundments and Containers) [*see also* 40 CFR Part 265, Subpart CC (Air Emission Standards for Tanks, Surface Impoundments and Containers)], facilities that treat, store, or dispose of RCRA hazardous waste with high organic concentrations in tanks, surface impoundments, or containers are subject to this article.
40. At the time of the CEI, Respondent stored solvent waste, e.g., volatile organics, including acetone and toluene, in tanks and containers (i.e., 3000 gallon tank and 200 gallon container) that did not conform with Article 28.5.
41. Pursuant to 22 C.C.R § 66265.1084(c)(1) [*see also* 40 CFR § 265.1084(c)(1)], an owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with the standards specified in section 66265.1085(c) [*see also* 40 CFR § 265.1085(c)].
42. At the time of the CEI, Respondent could not demonstrate that it determined the maximum organic vapor pressure of the hazardous waste placed in the 3000 gallon tank.
43. Pursuant to 22 CCR §§ 66265.1085(b) & (c) and 66265.1090(b) [*see also* 40 CFR §§ 265.1085(b) & (c) and 265.1090(b)], the owner or operator of a tank subject to Tank

Level 1 controls shall, in addition to other requirements, (i) equip the tank with a fixed roof that shall be installed with each closure device secured in the closed position when hazardous waste is in the tank; (ii) equip each opening in the fixed roof with a closure device; (iii) inspect the fixed roof and its closure devices at least once every year; (iv) prepare and maintain records of the tank identification number (or other unique identification) and tank inspection dates; and (v) prepare and maintain records for each tank that includes the determination of the maximum organic vapor pressure, including date, time, analytical method used, and analysis results.

44. At the time of the CEI, the EPA inspectors observed that the roof on the 3000 gallon tank was not fixed, was open, and its vent was not equipped with a closure device. Respondent also could not provide any inspection records for the 3000 gallon tank.
45. Pursuant to 22 CCR § 66265.1087 [*see also* 40 CFR § 265.1087], the owner or operator shall, in addition to other requirements, control emissions from each container subject to the Air Emission Standards for Tanks, Surface Impoundments and containers, including installing covers and closure devices for the container and maintaining each closure device in the closed position, controlling emissions so there are no detectable organic emissions, and transferring hazardous waste in or out of a container in a manner to minimize exposure of the hazardous waste to the atmosphere.
46. At the time of the CEI, the EPA inspectors observed that the 200 gallon solvent waste container was open and being moved without a cover.
47. Pursuant to 22 CCR § 66265.31 [*see also* 40 CFR § 265.31], facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
48. At the time of the CEI, the EPA inspectors observed that the facility was operating a 3000 gallon tank and a 200 gallon container containing solvents in a manner that did not prevent releases of hazardous waste by allowing the solvents to volatilize.
49. Therefore, EPA alleges that Respondent has failed to comply with 22 CCR, Division 4.5, Chapter 15, Article 28.5 (Air Emission Standards for Tanks, Surface Impoundments and Containers) [*see also* 40 CFR Part 265, Subpart CC (Air Emission Standards for Tanks, Surface Impoundments and Containers)]; 22 CCR § 66265.1084(c) [*see also* 40 CFR § 265.1084(c)]; 22 CCR §§ 66265.1085(b) & (c) and 66265.1090(b) [*see also* 40 CFR §§ 265.1085(b) & (c) and 265.1090(b)]; 22 CCR § 66265.1087 [*see also* 40 CFR § 265.1087]; and 22 CCR § 66265.31 [*see also* 40 CFR § 265.31].

COUNT VII

(Failure to assess the integrity of an existing tank system)

50. Paragraphs 1 through 49 above are incorporated herein by this reference as they were set forth herein in their entirety.
51. Pursuant to 22 CCR § 66265.191 [*see also* 40 CFR § 265.191], for each existing tank system that does not have secondary containment meeting the requirements of section 66265.193, the owner or operator shall determine that the tank system is not leaking or is unfit for use. Except as provided in subsections (c) and (e) of this section, the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified, professional engineer, registered in California, in accordance with Section 66270.11(d), that attests to the tank system's integrity.
52. At the time of the CEI, Respondent was not able to provide the EPA Investigators with the required documentation demonstrating proper assessment of the Facility's existing tank system.
53. Therefore, EPA alleges that Respondent has failed to comply with 22 CCR § 66265.191 [*see also* 40 CFR § 265.191].

COUNT VIII

(Failure to provide leak detection and secondary containment for tanks)

54. Paragraphs 1 through 53 above are incorporated herein by this reference as they were set forth herein in their entirety.
55. Pursuant to 22 CCR § 66265.193 (*see also* 40 CFR § 265.193), in order to prevent the release of hazardous waste or hazardous constituents to the environment, all existing tank systems, subject to the listed exceptions, must have secondary containment systems, which include a leak detection system, to prevent any migration of wastes or accumulated liquids out of the system to the soil, groundwater, or surface water and that are capable of detecting and collecting release and accumulated liquids until the collected material is removed.
56. At the time of the CEI, EPA Investigators observed that the Facility's 3000-gallon tank did not have a secondary containment system, including a leak detection system.
57. Therefore, EPA alleges that Respondent has failed to comply with 22 CCR § 66265.193 [*see also* 40 CFR § 265.193].

COUNT IX

(Failure to provide spill controls and prevention)

- 58. Paragraphs 1 through 57 above are incorporated herein by this reference as they were set forth herein in their entirety.
- 59. Pursuant to 22 CCR § 66265.194(b) (*see also* 40 CFR § 265.194(b)], the owner or operator shall use appropriate controls and practices to prevent spills and overflows from tanks or secondary containment systems.
- 60. At the time of the CEI, EPA Investigators observed that the Facility's tanks were not equipped with the required controls and the Facility did not follow the required spill control practices.
- 61. Therefore, EPA alleges that Respondent has failed to comply with 22 CCR § 66265.194(b) [*see also* 40 CFR § 265.194(b)].

COUNT X

(Failure to provide and maintain personnel training)

- 62. Paragraphs 1 through 61 above are incorporated herein by this reference as they were set forth herein in their entirety.
- 63. Pursuant to 22 CCR § 66265.16 [*see also* 40 CFR § 265.16], facility personnel shall 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 this chapter. The owner or operator shall ensure that this program includes all the elements described in the document required under subsection (d)(3) of this Section. Training records on current personnel shall be kept until closure of the facility.
- 64. At the time of the CEI, EPA Investigators observed that the Facility did not have an employee training plan and accordingly there were no training records available.
- 65. Therefore, EPA alleges that Respondent has failed to comply with 22 CCR § 66265.16 [*see also* 40 CFR § 265.16].

COUNT XI

(Failure to properly maintain contingency plan)

- 66. Paragraphs 1 through 65 above are incorporated herein by this reference as they were set forth herein in their entirety.

67. Pursuant to 22 CCR § 66265.52(c) and (e) [*see also* 40 CFR § 265.52(c) and (e)], the Facility's contingency plan shall (c) describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Section 66265.37; and (e) include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.
68. At the time of the CEI, EPA Investigators observed that the Facility's contingency plan lacked arrangements with local authorities and did not include descriptions and capabilities of the Facility's emergency equipment.
69. Therefore, EPA alleges that Respondent has failed to comply with 22 CCR § 66265.152(c) and (e) [*see also* 40 CFR § 265.52(c) and (e)].

D. CIVIL PENALTY

70. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, see 61 Fed. Reg. 69360 (Dec. 31, 1996), and the Civil Monetary Penalty Inflation Adjustment Rule, see 69 Fed. Reg. 7121 (Feb. 13, 2004), authorizes a civil penalty of up to TWENTY SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$27,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring between January 31, 1997 and March 15, 2004. The Civil Monetary Penalty Inflation Adjustment Rule issued in February 2004 authorizes a civil penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) for violations that occur after March 15, 2004. *see* 69 Fed. Reg. 7121 (Feb. 13, 2004), and authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$37,500) for violations that occur after Jan 11, 2009, *see* 73 Fed. Reg. 75340 (Dec. 11, 2008). Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed ONE HUNDRED TWENTY-SIX THOUSAND DOLLARS (\$126,000.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the "June 2003 RCRA Civil Penalty Policy." Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day-violations, case-specific circumstances, and the economic benefit gained from non-compliance, where appropriate.

E. ADMISSIONS AND WAIVERS OF RIGHTS

71. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
72. Respondent neither admits nor denies any allegations of fact or law as set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

73. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
74. No change in ownership or corporate partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
75. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO and to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

76. Respondent consents to the assessment of and agrees to pay a civil penalty of ONE HUNDRED TWENTY-SIX THOUSAND DOLLARS (\$126,000.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
77. Respondent shall submit payment of the ONE HUNDRED TWENTY-SIX THOUSAND DOLLARS (\$126,000.00) within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall

indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. Payment shall be made by certified or cashier's check or by Respondent's company check made payable to "Treasurer of the United States" and sent to:

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

At the time payment is made, a copy of the check shall be sent to:

Steven Armsey
Acting Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Estrella Armijo (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

78. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 CFR § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

79. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below:

For failure to submit a payment to EPA by the time required in this CA/FO: ONE THOUSAND DOLLARS (\$1,000) per day for the first to fifteenth day of delay, ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for the sixteenth to thirtieth day of delay, and TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per day for each day of delay thereafter.

80. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 CFR §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
81. All penalties shall be made payable by certified or cashier's check or by Respondent's company check to "Treasurer of the United States" and shall be remitted as described in Paragraph 77.
82. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
83. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

I. RESERVATION OF RIGHTS

84. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory, or common law enforcement authority of the United States.
85. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
86. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that

such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.

87. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits.

J. OTHER CLAIMS

88. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

K. MISCELLANEOUS

89. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
90. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

91. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

Date

Richard F. Kelly
Kop-Coat, Inc.

Date

Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency, Region 9

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 CFR Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9-2009-00__) be entered and that Kop-Coat, Inc. pay a civil penalty of ONE HUNDRED TWENTY-SIX THOUSAND DOLLARS (\$126,000.00) due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. Payment must be made pursuant to Section G of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

Date

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9