

Statutory and Regulatory Framework

4. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

5. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 3001, 3002, 3005 of RCRA, 42 U.S.C. §§ 6921, 6922, 6925 to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated, amongst others, the waste management regulations found at 40 C.F.R. Part 261 through Part 270.

6. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

7. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

8. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

9. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

10. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

11. The regulation at 40 C.F.R. § 260.10 defines “treatment” as any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amendable for recovery, amendable for storage, or reduced in volume.

12. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

13. The regulation at 40 C.F.R. § 260.10 defines “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constitute thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

14. “Solid waste” is defined at 40 C.F.R § 261.2.

15. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

16. The regulation at 40 C.F.R. § 260.10 defines “container” as any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

17. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

18. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

19. The regulations at 40 C.F.R. § 260.10 defines “central accumulation area” as any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to...§ 262.17 of this chapter (for large quantity generators).

20. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period.

21. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than \$25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$121,275 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and to take

the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

22. Respondent is a corporation authorized to conduct business within the State of Iowa. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

23. Respondent owns and operates a facility is located at 5555 Willow Creek Drive SW, Cedar Rapids, Iowa (“facility”). Respondent produces industrial paints and coatings for various large manufacturers to smaller businesses.

24. On or about February 20, 1990, Respondent notified EPA of its regulated waste activity as a Large Quantity Generator (LQG) and obtained the following RCRA ID number: IAD000651265. Respondent is a LQG of characteristics D001, D018, and D035 and listed hazardous wastes F003 and F005.

25. On or about September 12, 2023, EPA inspectors conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a Large Quantity Generator of hazardous waste.

Violations

26. Complainant hereby states and alleges that Respondent has violated RCRA, and the federal regulations promulgated thereunder, as follows:

Count 1

Failure to Conduct Hazardous Waste Determinations

27. Complainant hereby incorporates the allegations contained in Paragraphs 22 through 25 above, as if fully set forth herein.

28. Pursuant to 40 C.F.R. § 262.11, a generator of solid waste, as defined in 40 C.F.R. §§ 260.10 and 261.2, must determine if that waste is a hazardous waste using methods prescribed in the regulations.

29. At the time of the inspection, it was determined that Respondent was generating at least three undetermined solid waste streams:

- a. Solvent contaminated personal protective equipment (“PPE”) and wipes placed in the trashcan in the Pigment/Mixing Room, 500 Gallon Room Deck, and 1000 Gallon Room. This waste stream is identified by D001, D018, and D035 and F003 and F005 waste codes.

- b. Disposable cups with paint, equipment with paint, and loose paint place in the trashcan in the Laboratory, 500 Gallon Room, and 1000 Gallon Room. This waste stream is identified by D001, D018, and D035 and F003 and F005 waste codes.
- c. Aerosol cans awaiting puncturing in the Shipping and Receiving Area. This waste stream is identified by D001, D018, and D035 and F003 and F005 waste codes.

30. At the time of the inspection, Respondent had not conducted hazardous waste determinations on any of the solid waste streams described in the immediately preceding paragraph.

31. Respondent's failure to perform a hazardous waste determination on the above-referenced solid waste streams is a violation of 40 C.F.R. § 262.11.

Count 2
Operating as a Treatment, Storage or Disposal Facility
Without a RCRA Permit or RCRA Interim Status

32. Complainant hereby incorporates the allegations contained in Paragraphs 22 through 25 above, as if fully set forth herein.

33. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

33. At the time of the inspection, Respondent did not have a permit or interim status for the treatment, storage, or disposal of hazardous waste.

Management of containers

34. The regulation at 40 C.F.R. § 262.17(a)(1)(iv)(A) states that a container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.

35. At the time of the inspection, the inspector observed an unlatched funnel on a 55-gallon drum in the 500 Gallon Room.

36. Respondent's failure to close the container of hazardous waste is a violation of 40 C.F.R. § 262.17(a)(1)(iv)(A).

37. The regulation at 40 C.F.R. § 262.15(a)(4) states that a container holding hazardous waste must be closed at all times during accumulation, except: when adding, removing, or consolidating waste; or when temporary venting of a container is necessary.

38. At the time of the inspection the inspector observed a 55-gallon drum and a 5-gallon bucket in the 1000 Gallon Room that were not closed as required by the regulation above.

39. Respondent's failure to close the container of hazardous waste is a violation of 40 C.F.R. § 262.15(a)(4).

Labeling and Marking of Containers

40. The regulation at 40 C.F.R. § 262.15(a)(5) states that a generator must mark or label its container with the following words "Hazardous Waste."

41. At the time of the inspection the inspector observed a 5-gallon bucket that contained hazardous waste in the 1000 Gallon Room with no labeling on it.

42. Respondent's failure to label the container with the words "Hazardous Waste" is a violation of 40 C.F.R. § 262.15(a)(5).

43. The regulation at 40 C.F.R. § 262.17(a)(5)(i)(B) states that a large quantity generator must mark or label its containers with an indication of the hazards of the contents.

44. At the time of the inspection the inspector observed two 55-gallon containers in the Outside Central Accumulation Area that were not marked or labeled with an indication of the hazards of the contents.

45. Respondent's failure to label the containers with an indication of the hazard is a violation of 40 C.F.R. § 262.17(a)(5)(i)(B).

46. The regulation at 40 C.F.R. § 262.17(a)(5)(i)(C) states that a large quantity generator must mark or label its containers with the date upon which each period of accumulation begins clearly visible for inspection on each container.

47. At the time of the inspection the inspector observed three 55-gallon containers in the Outside Central Accumulation Area that were not marked with the accumulation start date.

48. Respondent's failure to label the containers with the accumulation start date is a violation of 40 C.F.R. § 262.15(a)(5).

Treatment of Hazardous Waste

49. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

50. At the time of the inspection, Respondent did not have a permit or interim status for the treatment of hazardous waste. The inspector observed solvent wipes air drying in the 500

Gallon Room, The Deck, The Laboratory, and 1000 Gallon Room. Air drying is a form of hazardous waste treatment.

51. Respondent's treatment of hazardous waste without a permit is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 270.

Emergency Response

52. The regulation at 40 C.F.R. § 262.255 states that a large quantity generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

53. At the time of the inspection the inspector observed rows of drums against a fence in the Outside Central Accumulation Area that did not provide adequate aisle space.

54. Respondent's failure to maintain adequate aisle space is a violation of 40 C.F.R. § 262.255.

55. The regulation at 40 C.F.R. § 262.262(b) states that a copy of the facility's contingency plan and all revisions to the plan must be maintained at the large quantity generator and must submit a quick reference guide of the contingency plan to the local emergency responders.

56. At the time of the inspection the inspector observed that Respondent failed to have a quick reference guide present at the facility.

57. Respondent's failure to prepare a quick reference guide is a violation of 40 C.F.R. § 262.262(b).

58. The regulations at 40 C.F.R. § 262.252(b) state that a large quantity generator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies such as a device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams.

59. At the time of the inspection the inspector observed that Respondent did not have any device to summon emergency authorities in the Central Accumulation Area.

60. Respondent's failure to have a device to summon emergency authorities in the Central Accumulation Area is a violation of 40 C.F.R. § 262.252(b).

61. The regulations at 40 C.F.R. § 262.252(c) state that a large quantity generator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for, and respond to, emergencies such as: portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment.

62. At the time of the inspection the inspector observed that Respondent did not have spill control equipment in the Central Accumulation Area.

63. Respondent's failure to have spill control equipment in the Central Accumulation Area is a violation of 40 C.F.R. § 262.252(c).

64. The regulations at 40 C.F.R. § 262.262(a) state that a copy of the contingency plan and all revisions to the plan must be maintained at the large quantity generator and that a large quantity generator must submit a copy of the contingency plan and all revisions to all local emergency responders.

65. At the time of the inspection the inspector observed that Respondent failed to submit a copy of the contingency plan to emergency responders.

66. Respondent's failure to submit a copy of the contingency plan to emergency responders is a violation of 40 C.F.R. § 262.262(a).

Personnel Training

67. The regulations at 40 C.F.R. § 262.17(a)(7)(iii) state that facility personnel must take part in an annual review of the initial training required in paragraph (a)(7)(i) of this section.

68. At the time of the inspection the inspector observed that the facility failed to provide annual RCRA hazardous waste training as required by the regulations.

69. Respondent's failure to provide the annual RCRA hazardous waste training is a violation of 40 C.F.R. § 262.17(a)(7)(iii).

70. The regulations at 40 C.F.R. § 262.17(a)(7)(iv)(A) state that a large quantity generator must maintain the following documents and records at the facility such as the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.

71. At the time of the inspection the inspector observed that Respondent failed to document position descriptions for employees working with hazardous waste.

72. Respondent's failure to document position descriptions for employees working with hazardous waste is a violation of 40 C.F.R. § 262.17(a)(7)(iv)(A).

CONSENT AGREEMENT

73. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) Admits the jurisdictional allegations set forth herein;

- (b) Neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

74. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

75. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein, and performance of the compliance actions described below.

76. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

77. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

78. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: *lchristen@klingerpaint.com*.

Penalty Payment

79. EPA has considered the seriousness of the violations and any good faith efforts to comply with the applicable requirements pursuant to Section 3008(a)(3), 42 U.S.C. § 6928(a)(3). However, ability to pay is considered a mitigating factor in EPA's RCRA Civil Penalty Policy (June 2003). Respondent has demonstrated that it is unable to pay any penalty in this matter. Because of Respondent's inability to pay the penalty, therefore, Complainant conditionally agrees to resolve the claims alleged herein for \$0.

Compliance Actions

80. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

81. Respondent shall submit four (4) Quarterly Compliance Reports to EPA which include descriptions and photographs demonstrating compliance with the regulations for all central accumulation areas, satellite accumulation areas, solvent-contaminated wipes collection containers, and universal waste management areas. When initial or annual refresher training occurs, documentation of such shall be provided in that quarterly report. If modifications are made to the contingency plan or quick reference guide during the reporting period, copies of those documents shall be provided in that quarterly report. The first submission is due within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. The subsequent three (3) submissions shall be submitted within ninety (90) days of the previous submission.

82. Respondent shall submit all documentation generated to comply with the requirements as set forth in the immediately preceding paragraphs to the following address or email address:

Edwin Buckner, RCRA Section
Buckner.edwin@epa.gov
Chemical Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Effect of Settlement and Reservation of Rights

83. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

84. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

85. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

86. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

87. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. §

6928, and to seek penalties against Respondent in an amount not to exceed Seventy Thousand Seven Hundred Fifty-Two Dollars (\$70,752) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

88. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), 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 Respondent's facility.

89. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

90. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

91. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

92. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

93. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

94. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

95. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

96. The provisions of this Consent Agreement and Final Order shall be deemed

satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

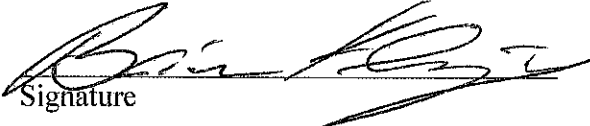
Adam Hilbert
Office of Regional Counsel

RESPONDENT:

Klinger Paint Company, Inc.

12/06/24

Date



Signature

Brian Klinger

Printed Name

Vice President

Title

FINAL ORDER

Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Adam Hilbert
Office of Regional Counsel
hilbert.adam@epa.gov

Edwin Buckner
Enforcement and Compliance Assurance Division
Buckner.edwin@epa.gov

Carrie Venerable
Office of Regional Counsel /SEE
Venerable.Carrie@epa.gov

Copy via Email to Respondent:

Luke Christen, Plant Operations Manager
Klinger Paint Company, Inc.
5555 Willow Creek Drive SW
Cedar Rapids, Iowa 52404
lchristen@klingerpaint.com

Copy via Email to Respondent's Attorney:

Jake Nelson
jnelson@SPMBLAW.com

Dated this _____ day of _____, _____.

Signed

Copy delivered to the State of Iowa:

Ed Tormey, Acting Administrator (e-copy)
Environmental Services Division
Iowa Department of Natural Resources
Ed.tormey@dnr.iowa.gov

Mike Sullivan, Chief (e-copy)
Contaminated Sites Section
Iowa Department of Natural Resources
Michael.sullivan@dnr.iowa.gov