

US EPA ARCHIVE DOCUMENT

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA-9-2007-
VAN CAN COMPANY)	
)	CONSENT AGREEMENT AND
EPA ID No. CAD 076 063 312)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	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 (AC.F.R.@) 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 Van Can Company (AVan Can@ or ARespondent@).
2. Respondent owns and operates a facility located at 10837 Etiwanda Avenue in Fontana, California, 92337 (the "Facility"). The Facility's EPA Identification Number is CAD076063312. Respondent cuts and coats sheet metal used to manufacture two-part cans.
3. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (ACA/FO@), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) obtain a permit or grant of interim status for storage of hazardous waste, a violation of California Health and Safety Code (AH&SC@) Section 25200 and 22 California Code of Regulations (AC.C.R.@) ' 66270.1(c) [*see also* 40 C.F.R. ' 270.1(c)]; (2) close containers of hazardous waste, a violation of 22 C.C.R. ' 66265.173 [*see also* 40 C.F.R. ' 265.173]; and (3) maintain the facility to prevent a

release, a violation of 22 C.C.R. ' 66265.31 [see also 40 C.F.R. ' 265.31]. 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

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 ' 3006 of RCRA, 42 U.S.C. ' 6926, and 40 C.F.R. 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 thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. ' ' 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 C.C.R. ' 66260.10 [see also 40 C.F.R. ' 260.10].
6. Respondent is the "operator" of a facility as defined in 22 C.C.R. ' 66260.10 [see also 40 C.F.R. ' 260.10].
7. Respondent's hazardous waste manifests indicate it is a "large quantity generator" of hazardous waste as defined in 22 C.C.R. ' 66260.10 [40 C.F.R. ' 260.10].
8. Respondent is or has been engaged in "storage" of hazardous waste as defined in 22 C.C.R. ' 66260.10 [see also 40 C.F.R. ' 260.10].
9. Respondent generates and accumulates, or has generated and accumulated, materials that are "wastes" as defined in 22 C.C.R. ' ' 66260.10 and 66261.2 [see also 40 C.F.R. ' ' 260.10 and 261.2].
10. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in California Health & Safety Code ' 25117, and 22 C.C.R. ' ' 66260.10 and 66261.3 [see also RCRA ' 1004(5), and 40 C.F.R.

¹ All citations to the C.C.R. 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.

' ' 260.10 and 261.3]. These hazardous wastes include, but are not limited to, ignitable waste paint-related materials (D001, F003, and F005).

11. On February 13, 2006, EPA conducted a RCRA Compliance Evaluation Inspection (ACEI@) 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 California Health & Safety Code ' 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 ' 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 redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT I

Storage of Hazardous Waste Without a Permit

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 22 C.C.R. ' 66270.1(c) requires that each person owning or operating a facility where hazardous waste is transferred, treated, stored, or disposed must have a permit. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste under 22 C.C.R. ' 66270.1(c) [*see also* 40 C.F.R. ' 270.1(c)].

18. 22 C.C.R. ' 66262.34 provides that large quantity generators of hazardous waste may accumulate hazardous waste onsite for 90 days or less without a permit or grant of interim status, provided the generator complies with the requirements which are set forth or incorporated by reference in 22 C.C.R. ' 66262.34 [*see also* 40 C.F.R. ' 262.34(a)]. A large quantity generator=s failure to comply with these requirements subjects it to the permitting requirements of 22 C.C.R. ' 66270.1(c) [*see also* 40 C.F.R. ' 270.1].
19. On February 13, 2006, the EPA Inspector observed six 55-gallon drums of RCRA D001 waste that had been stored for over 90 days.
20. 22 C.C.R. ' ' 66262.34 requires generators who accumulate hazardous waste onsite without a permit or grant of interim status to label containers with the words Ahazardous waste@ and with the date accumulation of the waste begins, and the label must be visible for inspection [*see also* 40 C.F.R. ' 262.34(a)]. Generators who fail to label containers of hazardous waste accordingly fail to meet the requirements of 22 C.C.R. ' 66262.34, and are subject to the permitting requirements of 22 C.C.R. ' 66270.1 [*see also* 40 C.F.R. ' 270.1].
21. On February 13, 2006, the EPA Inspector observed that twelve 55-gallon drums in the hazardous waste storage area were missing accumulation start dates, and thirteen drums had no labels or labels were not visible for inspection.
22. Respondent=s failure to meet the requirements set forth or referenced by 22 C.C.R. ' 66262.34 subject it to the permit requirements of 22 C.C.R. ' 66270.1 [*see also* 40 C.F.R. ' ' 262.34 and 270.1]. Therefore, EPA alleges that Respondent stored hazardous waste without a permit, a violation of 22 C.C.R. ' 66270.1(c) [*see also* 40 C.F.R. ' 270.1(c)].

COUNT II

Failure to Close Containers of Hazardous Waste

23. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
24. 22 C.C.R. ' 66265.173(a) requires that containers holding hazardous waste shall always be closed during transfer and storage, except when it is necessary to add or remove waste [*see also* 40 C.F.R. ' 265.173(a)].
25. On February 13, 2006 the EPA Inspector observed one 55-gallon drum of hazardous waste in a satellite accumulation area that had a lid that was not secured.
26. Therefore, EPA alleges that Respondent has violated 22 C.C.R. ' 66265.173 [*see also* 40 C.F.R. ' 265.173].

COUNT III

Failure to Maintain Facility to Minimize the Possibility of a Release

27. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.
28. 22 C.C.R. ' 66265.31 [*see also* 40 C.F.R. ' 265.31] requires that facilities shall be maintained and operated to minimize the possibility of 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.
29. On February 13, 2006, the EPA Inspector observed an area under a pipe where waste had leaked.
30. Therefore, EPA alleges that Respondent has violated 22 C.C.R. ' 66265.31 [*see also* 40 C.F.R. ' 265.31].

D. CIVIL PENALTY

31. 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. 69 Fed. Reg. 7121 (Feb. 13, 2004). 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 THREE THOUSAND NINE HUNDRED DOLLARS (\$3,900.00) 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, for case-specific circumstances, and for the economic benefit gained from non-compliance, where appropriate.

E. SUPPLEMENTAL ENVIRONMENTAL PROJECT

32. As part of the settlement of this enforcement action, Respondent shall complete a pollution prevention (AP2") supplemental environmental project (ASEP@). Performance of the tasks detailed in this Section shall constitute satisfactory performance of the SEP, which the parties agree is intended to provide significant environmental or public health protection and improvements.
33. The P2 SEP shall consist of installing equipment to minimize generation of solvent waste.
34. Respondent shall expend at least ONE HUNDRED AND NINETY THOUSAND DOLLARS (\$190,000) to complete the SEP described herein.
35. Currently, solvent is used to clean and maintain the compression rollers. Respondent shall install coating roller scraper blades on each of the sheet metal roller coating lines operating at the Facility. The scraper blades will clean the compression rollers associated with the roller coaters. With the installation of the scraper blade systems the solvent cleaning waste stream is expected to be reduced to less than 100 gallons per year.
36. The installation of the scraper blade systems will also result in a reduction in atmospheric emissions of volatile organic compounds (VOCs) and a reduction in the amount of solvent waste generated at the Facility.
37. Respondent shall begin installation of the equipment described herein within 180 days of the effective date of this CA/FO.
38. SEP Completion Report. Upon completion of the SEP, Respondent shall submit to EPA a SEP Completion Report. Respondent shall submit the SEP Completion Report no later than 60 days after the completion of the SEP. The report shall include a detailed description of any problems encountered and the solutions thereto, itemized costs, and certification from an authorized company official that the SEP has been fully implemented pursuant to the provisions of this CA/FO.
39. Within 60 days of completion of the SEP, Respondent shall submit to EPA copies of all receipts for contracts and equipment purchases. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion costs are not eligible for SEP credit, those costs must be clearly identified as such.

F. ADMISSIONS AND WAIVERS OF RIGHTS

- 40. 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.
- 41. Respondent neither admits nor denies any allegations of fact or law 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.

G. PARTIES BOUND

- 42. 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 H has been paid in accordance with Section H, any delays in performance and/or stipulated penalties have been resolved, and the SEP described in Section E is completed. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
- 43. 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.
- 44. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

H. PAYMENT OF CIVIL PENALTY

- 45. Respondent consents to the assessment of and agrees to pay a civil penalty of THREE THOUSAND NINE HUNDRED DOLLARS (\$3,900.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
- 46. Respondent shall submit payment of the THREE THOUSAND NINE HUNDRED DOLLARS (\$3,900.00) 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 payable to ATreasurer of the United States@ and sent to:

Mellon Bank
 U.S. Environmental Protection Agency - Region 9
 P.O. Box 371099M
 Pittsburgh, PA 15251.

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

Danielle Carr
 Regional Hearing Clerk (RC-1)
 U.S. Environmental Protection Agency - Region 9
 75 Hawthorne Street
 San Francisco, CA 94105

and

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

47. 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 C.F.R. ' 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.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

48. 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 first to fifteenth day of delay, ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for sixteenth to thirtieth day of delay, and TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per day for each day of delay thereafter.

49. Except as provided below, in the event that Respondent fails to conduct the SEP in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of up to SEVENTEEN THOUSAND THREE HUNDRED AND TWENTY-FIVE DOLLARS (\$17,325).
50. If Respondent fails to conduct the SEP in accordance with the terms of this CA/FO, but Respondent (a) has made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least ONE HUNDRED AND SEVENTY ONE THOUSAND DOLLARS (\$171,000) was expended on trying to complete the SEP, no stipulated penalty will apply.
51. If Respondent satisfactorily completes the SEP otherwise in accordance with the terms of this CA/FO, but Respondent spent less than ONE HUNDRED AND SEVENTY ONE THOUSAND DOLLARS (\$171,000) on the project, Respondent shall pay a stipulated penalty of up to TWO THOUSAND NINE HUNDRED DOLLARS (\$2,900).
52. If Respondent spends at least ONE HUNDRED AND SEVENTY ONE THOUSAND DOLLARS (\$171,000) and satisfactorily completes the SEP otherwise in accordance with the terms of this CA/FO, no stipulated penalty will apply.
53. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO, are within the sole discretion of the Director, Waste Management Division, EPA Region IX.
54. Subject to the terms of this CA/FO, all penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
55. 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 C.F.R. ' 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
56. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 46.

57. The payment of stipulated penalties shall not alter in any way Respondent=s obligation to complete the performance required hereunder.
58. 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.

J. RESERVATION OF RIGHTS

59. 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 (ACERCLA@), or any other statutory, regulatory or common law enforcement authority of the United States.
60. 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.
61. 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.
62. 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.

K. OTHER CLAIMS

63. 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.

L. MISCELLANEOUS

- 64. This CA/FO may be amended or modified only by written agreement executed by both EPA and Van Can Company.
- 65. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
- 66. 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	[Name, Title] Van Can Company
_____	_____
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 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9-2007-) be entered and that Van Can Company pay a civil penalty of THREE THOUSAND NINE HUNDRED DOLLARS (\$3,900.00) due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order. Payment must be paid by certified or cashier=s check made out to the Treasurer of the United States, and sent to Mellon Bank, P.O. Box 371099M, Pittsburgh, PA, 15251. In addition Respondent will complete the Supplemental Environmental Project described in Section E.

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