

**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



STATE OF CONNECTICUT

**v.
DREAM AUTO COLORS, INC. d.b.a. MAACO**

CONSENT ORDER no. COWSWDH 10019

Date Issued: January 3, 2011

A. With the agreement of Dream Auto Colors, Inc. d.b.a. Maaco ("Maaco"), the Commissioner of Environmental Protection ("the Commissioner") finds:

General Findings:

1. Respondent maintains an auto body repair and painting business at 31 Nutmeg Valley Road, Wolcott, Connecticut ("the site").
2. Respondent is or has been a generator of hazardous waste at the site.
3. As of March 23, 2010, Respondent:
 - a. Failed to submit a generator biennial report as required by Section 22a-449(c)-102(a)(1) of the Regulations of Connecticut State Agencies ("RCSA"), incorporating Title 40 of the Code of Federal Regulations ("40 CFR") 262.41. Specifically, by accumulating more than 1000 kilograms of hazardous waste on site, Respondent has operated as a large quantity generator. As such, the company is required to have submitted biennial reports. However, Respondent has never submitted a generator biennial report.
 - b. Failed to maintain adequate aisle space to allow the unobstructed movement of personnel and equipment to any area of facility operation in an emergency as required by Section 22a-449(c)-102(a)(1) of the RCSA, incorporating 40 CFR 262.34(a)(4) and 265.35. Specifically, at the time of the March 23, 2010 inspection, there was no aisle space for the approximately 32, 5 gallon containers in the hazardous waste storage area.
 - c. Failed to mark containers of hazardous waste with the words "hazardous waste" and a description of their contents, such as the chemical name, as required by Section 22a-449(c)-102(a)(2)(J) of the RCSA, incorporating 40 CFR 262.34(a)(3) with specified changes. Specifically, the approximately 32, 5 gallon containers lacked the words "hazardous waste" and a description of their contents.
 - d. Failed to mark containers of hazardous waste with the date upon which accumulation began as required by Section 22a-449(c)-102(a)(1) of the RCSA, incorporating 40 CFR 262.34(a)(2). Specifically, at the time of the DEP inspection, the five, 55 gallon drums and approximately 32, 5 gallon containers in the hazardous waste storage area lacked the dates of accumulation.
 - e. Accumulated hazardous waste on site for greater than 90 days without having obtained a hazardous waste storage permit or having interim status, in violation of Section 22a-449(c)-102(a) of the RCSA,

incorporating 40 CFR 262.34(a). Specifically, Respondent had been accumulating hazardous waste since July 1, 2008, more than 90 days before the March 23, 2010 inspection.

- f. Failed to take remedial actions following inspections as required by Section 22a-449(c)-102(b)(2) of the RCSA, incorporating 40 CFR 265.15(c). Specifically, problems that should have been identified during inspections, such as lack of aisle space and unmarked containers of hazardous waste, had not been corrected.
 - g. Failed to develop and follow a written inspection schedule as required by Section 22a-449(c)-102(b)(2) of the RCSA, incorporating 40 CFR 265.15(b)(1) and 265.15(b)(4). Specifically, there was no written schedule for inspections of the container storage area, the safety and emergency equipment and loading and unloading areas.
 - h. Failed to record inspections in a log or summary as required by Section 22a-449(c)-102(b)(2) of the RCSA, incorporating 40 CFR 265.15(d).
 - i. Failed to amend the contingency plan for the facility when the list of emergency coordinators changed as required by Section 22a-449(c)-102(a)(1) of the RCSA, incorporating 40 CFR 262.34(a)(4) and 265.54(d). The contingency plan for the facility had been prepared in 1994. The list of emergency coordinators and phone numbers was not up-to-date. The spill clean-up contractor listed in the contingency plan was no longer in business. The contingency plan also had to be revised to include descriptions of arrangements with local authorities to coordinate emergency service, notification procedures, and updated emergency response procedures.
 - j. Failed to ensure that all personnel involved in hazardous waste management were properly trained as required by Section 22a-449(c)-102(a)(1) of the RCSA, incorporating 40 CFR 262.34(a)(4) and 265.16(a) and (b). Specifically, Respondent provided employees with 29 CFR 1910.120 ("Right to know") training on October 11, 2005. However, RCRA training had not been given to employees.
4. On May 26, 2010, the Department of Environmental Protection ("DEP") issued Notice of Violation no. WSWDH10052 to Respondent to correct the violations listed in paragraphs A.3.a. through A.3.j. of this Consent Order.
5. Respondent has corrected the violations cited in paragraphs A.3.a. through A.3.d. based on review of submittals from Respondent with the dates referenced: A.3.a. – June 24, 2010; A.3.b., A.3.c., and A.3.d., – July 27, 2010.
6. By virtue of the above, Respondent has violated Sections 22a-449(c)-100 through 119 of the RCSA, incorporating Title 40 of the CFR, Parts 260 through 279.

Consent Order Requirements:

- B. With the agreement of Respondent, the Commissioner, acting under Sections 22a-6, 22a-131 and 22a-449 of the Connecticut General Statutes ("CGS"), orders Respondent as follows:
- 1. Compliance: Respondent shall correct all violations identified in paragraph A.3 above and shall maintain its compliance with all applicable provisions of the hazardous waste regulations, RCSA Sections 22a-449(c), et seq., including but not limited to those regulations applicable to generators of hazardous waste, including the provisions of the RCSA identified in paragraph A.3. above. In particular:

- a. Within **thirty (30) days** after issuance of this Consent Order, Respondent shall provide documentation to the Commissioner that one or more consultants have been retained by Respondent, or shall demonstrate to the Commissioner that qualified in-house expertise exists to prepare the documents and implement or oversee the actions required by this Consent Order and shall, by that date, notify the Commissioner in writing of the identify of such consultants or in-house experts. Respondent shall retain one or more qualified consultants or in-house experts, acceptable to the Commissioner until this Consent Order is fully complied with, and within ten (10) days after retaining any consultant or in-house expert other than one originally identify under this paragraph, Respondent shall notify the Commissioner in writing of the identity of such other consultant or in-house expert. Respondent shall submit to the Commissioner a description of a consultant's or in-house expert's education, experience and training which is relevant to the work required by this Consent Order within ten (10) days after a request for such a description. Nothing in this paragraph shall prevent the Commissioner from finding a previously acceptable consultant or in-house expert unacceptable.
 - b. On or before **forty-five (45) days** after issuance of this consent order, Respondent shall perform all actions which the Commissioner alleges it failed to perform as specified in paragraphs A.3.e. through A.3.j. of this consent order and submit for the Commissioner's review and written approval certification of compliance with the waste handling requirements specified in these paragraphs, and documentation demonstrating such compliance.
 - c. On or before **sixty (60) days** after issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a plan which details the actions and/or operational changes at the site necessary to ensure future compliance with Connecticut's hazardous waste management regulations. Within five (5) days after the Commissioner approves such plan, Respondent shall carry out the plan and maintain it in full effect thereafter.
 - d. Respondent shall conduct a comprehensive recycling review of the site to evaluate compliance with Connecticut's recycling laws set forth in Section 22a-241b(c) of the CGS. On or before **ninety (90) days** after the date of issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a business recycling profile documenting the management of recyclable materials at the site. A blank business recycling profile is included as Attachment A to this consent order. The profile can also be found at <http://www.ct.gov/dep/cwp/view.asp?a=2714&q=324886&depNav>. Within five (5) days after the Commissioner approves such business recycling profile, Respondent shall carry out the business recycling profile and maintain it in full effect thereafter.
2. Status of Notice of Violation No. WSWDH10052. This consent order supersedes Notice of Violation No. WSWDH10052.

Penalty requirements:

3. Civil penalty. Respondent shall pay a penalty of **eighteen thousand, eight hundred and twenty eight dollars (\$18,828)** as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraph A.3 of this consent order. The penalty shall be paid according to the following schedule:

On or before **fourteen (14) days** after issuance of this consent order – **two thousand, five hundred dollars (\$2,500).**

On or before **ninety (90) days** after issuance of this consent order – **two thousand, five hundred dollars (\$2,500).**

On or before **one hundred and eighty (180)** days after issuance of this consent order – **two thousand, five hundred dollars (\$2,500)**.

On or before **two hundred and seventy (270)** days after issuance of this consent order – **two thousand, five hundred dollars (\$2,500)**.

On or before **three hundred and sixty (360)** days after issuance of this consent order – **two thousand, five hundred dollars (\$2,500)**.

On or before **four hundred and fifty (450)** days after issuance of this consent order – **two thousand, five hundred dollars (\$2,500)**.

On or before **five hundred and forty (540)** days after issuance of this consent order – **two thousand, five hundred dollars (\$2,500)**.

On or before **six hundred and thirty (630)** days after issuance of this consent order – **one thousand, three hundred and twenty eight dollars (\$1,328)**.

4. Payment of penalties. Each payment of the penalty required under paragraph B.3. of this consent order shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to “Treasurer, State of Connecticut.” The check shall state on its face, “Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division civil penalty, consent order no. COWSWDH 10019 .” Copies of each check and any transmittal letter shall also be sent to Julie Dutton in the Bureau of Materials Management and Compliance Assurance at the same address.
5. Supplemental Environmental Project. In lieu of making the fifth, sixth, seventh, and eighth civil penalty payments prescribed in paragraph B.3. above, Respondent may comply with the requirements of paragraph B.5.a. or B.5.b. regarding supplemental environmental projects (“SEPs”).
 - a. Payment to the Statewide SEP Account. Respondent shall make three payments of two thousand, five hundred (\$2,500) each and one payment of one thousand, three hundred and twenty eight (\$1,328) each (a total of eight thousand, eight hundred and twenty eight dollars - \$8,828) to the Statewide SEP Account. The payments shall be made on or before three hundred and sixty (360) days, four hundred and fifty (450) days, five hundred and forty (540) days, and six hundred and thirty (630) days after issuance of this consent order. Each payment shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to “Treasurer, State of Connecticut”, with the notation thereon “Statewide SEP Account” and “Consent Order no. COWSWDH10019 .” Copies of each check and any transmittal letter shall also be sent to Julie Dutton in the Bureau of Materials Management and Compliance Assurance at the same address.
 - b. Performance of SEP(s)
 - (1) Within forty-five days (45) from the date of issuance of this consent order, Respondent shall submit for the Commissioner’s review and written approval a proposal to perform one or more SEPs (“proposal”). The proposal shall include: a description of the SEP(s); an explanation as to why the particular SEP(s) is (are) being proposed; a schedule for implementation and completion of the SEP(s); itemized costs to be incurred by Respondent in carrying out the SEP(s); and a description of the benefit of the SEP(s) to the general public or the environment. Respondent shall be credited up to eight thousand, eight hundred and twenty eight dollars (\$8,828) to partially fund any SEP(s).

- (2) The Commissioner will either (a) approve the proposal, including in such approval the dollar amount of the penalty offset to be realized by Respondent attributable to the SEP(s) and any additional conditions deemed necessary by the Commissioner; or (b) disapprove the proposal and notify Respondent, in writing, of deficiencies in the proposal and any additional actions or information required to be taken or supplied by Respondent. The decision to approve or disapprove an SEP shall be in the sole discretion of the Commissioner.
- (3) If the Commissioner approves Respondent's proposal and Respondent fails to perform any approved SEP within the timeframes specified in the proposal, a payment to the Statewide SEP Account in an amount equal to the amount credited to Respondent for the SEP under B.5.b.(2). shall be due immediately upon notification by the Commissioner. In addition, a two thousand, five hundred dollar (\$2,500) penalty shall also be paid at this time for non-compliance with the approved proposal. This additional two thousand, five hundred dollar (\$2,500) penalty shall apply to each SEP which Respondent fails to perform in accordance with the terms and conditions approved by the Commissioner. Any payment made pursuant to this subparagraph shall be made in accordance with paragraph B.3. of this consent order. Respondent shall not be given any credit or reduction in the civil penalty provided for by this paragraph if an SEP included in an approved proposal is not fully complied with.
- (4) The net present after-tax value of the SEP(s) shall be equivalent to the sums identified in this paragraph or Respondent shall submit certified documentation that no tax credits shall be obtained as a result of the SEP(s) performed under this paragraph.
- (5) If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding an SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
- (6) Respondent shall not claim or represent that any SEP payment made pursuant to this consent order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.
- (7) Within thirty (30) days after completion of the SEP(s), Respondent shall submit for the Commissioner's review and written approval a comprehensive final report that certifies completion of the SEP(s). Such final report shall include, at a minimum, a narrative history of the project, detailed explanation of its design and implementation, summary of any data collected, complete final accounting of actual project costs including receipts for out-of-pocket costs, and a discussion of environmental benefits resulting from the SEP(s).
- (8) Should the Commissioner determine that the actual cost to Respondent in completing an SEP is less than the estimated cost identified in the proposal approved by the Commissioner in accordance with paragraph B.5.b.(2)., Respondent shall pay the difference between such actual cost and estimated cost to the Commissioner as unexpended SEP funds. In addition, if the total amount credited for the SEP(s) is less than eight thousand, eight hundred and twenty eight dollars (\$8,828), Respondent shall pay the difference as unexpended SEP funds. The Commissioner shall notify Respondent in writing of the amount of any such unexpended SEP funds which are due. Respondent shall, within fourteen (14) days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to "Treasurer, State of Connecticut" and the check shall state on its face "Statewide SEP Account." Respondent shall mail or personally deliver such payment to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts

Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127. Copies of the check and any transmittal letter shall also be sent to Julie Dutton in the Bureau of Materials Management and Compliance Assurance at the same address.

Other Provisions/Conditions of the Consent order:

6. Full compliance. Respondent shall not be considered in full compliance with this consent order until all actions required by this consent order have been completed as approved and to the Commissioner's satisfaction.
7. Sampling and samples analyses. All samples analyses which are required by this order and all reporting of such sample analyses shall be conducted by a laboratory certified by the Connecticut Department of Public Health to conduct such sampling and analyses. All sampling and sample analyses performed under this order shall be performed in accordance with procedures specified or approved, in accordance with EPA document SW-846. Unless otherwise by the Commissioner in writing, the value of each parameter shall be reported to the maximum level of precision and accuracy specified in the applicable protocol, and if no such level is specified, to the Analytical detection Limit, as defined in Section 22a-113k-1 of the Regulations of Connecticut State Agencies. All samples shall be discrete rather than composite samples.
8. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this consent order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within **thirty (30)** days of the Commissioner's notice of deficiencies. In approving any document or other action under this consent order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this consent order. Nothing in this paragraph shall excuse noncompliance or delay.
9. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner. "Hazardous waste" shall be defined under Subtitle C of the Resource Conservation and Recovery Act.
10. Dates. The date of "issuance" of this consent order is the date the consent order is deposited in U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this consent order, the word "day" as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
11. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in section 22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and Respondent or Respondent's chief executive officer and each such individual shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense under section 53a-157b of the Connecticut General Statutes and any other applicable law."

12. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this consent order may subject Respondent to an injunction and penalties.
13. False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under section 53a-157b of the Connecticut General Statutes and any other applicable law.
14. Notice of transfer; liability of Respondent. Until Respondent has fully complied with this consent order, Respondent shall notify the Commissioner in writing no later than **fifteen (15) days** after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this consent order or after obtaining a new mailing or location address. Respondent's obligations under this consent order shall not be affected by the passage of title to any property to any other person or municipality.
15. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this consent order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this consent order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
16. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
17. No assurance by Commissioner. No provision of this consent order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this consent order will result in compliance.
18. Access to site. Any representative of the Department of Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
19. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.
20. Notice to Commissioner of changes. Within **fifteen (15) days** of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this consent order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Commissioner.


21. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within **five (5)** days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
22. Submission of related documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Ms. Lena Tan, Environmental Analyst
 Department of Environmental Protection
 Bureau of Materials Management and Compliance Assurance
 Waste Engineering and Enforcement Division
 79 Elm Street
 Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order:

Dream Auto Colors, Inc. d.b.a. Maaco

BY:



 Signature

Neil O'Donnell

 Name (Typed)

President

 Title (Typed)

DATE: 12/9/10

Issued as a final order of the Commissioner of the Department of Environmental Protection.



 Amey W. Marrella, Commissioner

12 / 30 / 10

 Date

CONSENT ORDER no. COWSWDH 10019