



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

To: Board of Environmental Protection
From: Timothy Wright and Michael Hudson, Hazardous Waste Enforcement Unit, Bureau of Remediation and Waste Management (BRWM)
Date: March 18, 2010
RE: Administrative Consent Agreement - Spray Maine, Inc., South Berwick, Maine

Statutory and Regulatory Reference: The Hazardous Waste Management Rules, Chapters 850 through 857 adopted pursuant to the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Section 1301 et seq., specifies certain requirements for the management, storage, treatment and disposal of hazardous waste.

Location: Spray Maine, Inc., South Berwick, Maine

Description: Spray Maine has entered into the attached Consent Agreement as proposed by Department staff in order to resolve violations of Maine's Hazardous Waste Management Rules. The hazardous waste violations were identified during inspections conducted at Spray Maine on March 17, 2009. The violations identified include the following: 1) failure to determine if wastes generated were hazardous waste, 2) failure to place hazardous waste in a container meeting regulatory requirements, 3) offering hazardous waste to an unlicensed transporter and unlicensed disposal facility, 4) failure to label and date containers of hazardous waste, 5) failure to keep containers of hazardous waste closed, 6) failure to conduct daily inspections, 7) failure to store hazardous wastes in containers that are not rusted, dented or leaking, 8) failure to segregate incompatible hazardous wastes and materials, 9) failure to containerize universal waste lamps, and 10) failure to label containers of universal wastes.

To resolve these violations, Spray Maine has agreed to henceforth comply with 38 M.R.S.A. §§ 1301 through 1319-Y and all applicable standards of the Rules, Chapters 850 through 857. In addition, Spray Maine has agreed to pay to the Maine Hazardous Waste Fund a penalty of Twenty One Thousand Dollars (\$21, 000.00) as specified in the Agreement.

The Maine Hazardous Waste Fund is established by statute to provide the Department with the capability for prompt and effective response to spills and unlicensed discharges of hazardous waste, and for the inspection or supervision of hazardous waste handlers and related hazardous waste activities. Pursuant to statute, all fees, penalties, interest, and other charges relative to those activities must be credited to the Maine Hazardous Waste Fund.

AUGUSTA 17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017 (207) 287-7688 FAX: (207) 287-7826 RAY BLDG., HOSPITAL ST.
BANGOR 106 HOGAN ROAD BANGOR, MAINE 04401 (207) 941-4570 FAX: (207) 941-4584
PORTLAND 312 CANCO ROAD PORTLAND, MAINE 04103 (207) 822-6300 FAX: (207) 822-6303
PRESQUE ISLE 1235 CENTRAL DRIVE, SKYWAY PARK PRESQUE ISLE, MAINE 04769-2094 (207) 764-0477 FAX: (207) 760-3143

Spray Maine has agreed to pay the above penalty which was based upon the type of violations involved, the amount of waste involved, the relative extent of deviation from the requirements, and any economic benefit realized. Mitigating factors considered included Spray Maine's prompt disposal of unusable or unwanted ignitable hazardous waste paints and paint products. Aggravating factors included offering hazardous wastes to an unlicensed transporter and unlicensed disposal facility and storage of hazardous wastes in rusted, dented and leaking containers.

Department Recommendation:

The Department recommends that the Board accept the Consent Agreement as part of its Consent Agenda to resolve the issues addressed.

Staff Contact persons:

Timothy Wright and Michael Hudson, Hazardous Waste Enforcement Unit, BRWM

Estimated time of presentation: No presentation; Consent agenda item



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF:

SPRAY MAINE, INC.) ADMINISTRATIVE CONSENT
4 CENTRAL STREET, SOUTH BERWICK) AGREEMENT
YORK COUNTY, MAINE) (38 M.R.S.A. § 347-A)
HAZARDOUS WASTE ACTIVITIES)

This Agreement, by and among Spray Maine, Inc. (Spray Maine), the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General, is entered into pursuant to the laws concerning the Department's Organization and Powers, 38 M.R.S.A. § 347-A(1).

THE PARTIES AGREE AS FOLLOWS:

- 1. Spray Maine, Inc. (Spray Maine) is a Maine corporation that operates a custom spray painting and silk screening operation with its principal location at 4 Central Street, South Berwick, Maine. Christopher Donahue is the President of Spray Maine.
2. The violations described herein occurred at 4 Center Street in South Berwick, Maine.
3. Spray Maine is a generator of hazardous waste including, but not limited to, chromium waste, ignitable paint related waste and corrosive waste. As a result, Spray Maine is subject to Maine's Hazardous Waste, Septage and Solid Waste Management Act ("Act") 38 M.R.S.A. §§ 1301 through 1319-Y and the Department's Hazardous Waste Management Rules ("Rules"), 06-096 CMR 850 through 857. In addition, on July 8, 1980, Spray Maine notified the U.S. Environmental Protection Agency ("US EPA") of its regulated waste activity and was assigned the US EPA hazardous waste generator identification number MED071746689.
4. On February 21, 1997, Department staff conducted an inspection at Spray Maine's facility to assess compliance with the hazardous waste management standards of the Act and Rules. A Notice of Violation was issued on August 17, 1997 for failure to obtain a license for treatment of hazardous waste, failure to inspect containers of hazardous wastes on a daily basis and maintain an inspection log, failure to label and date containers of hazardous waste, failure to submit a generator state copy of a hazardous waste manifest, failure to store containers of hazardous waste on a firm working surface and failure to keep containers of hazardous waste closed.
5. On March 17, 2009, Department staff conducted an inspection of Spray Maine's facility to assess compliance with the hazardous waste management standards of the Act and Rules. The inspection revealed the following violations:

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143

IN THE MATTER OF:

SPRAY MAINE, INC.	)	ADMINISTRATIVE CONSENT
4 CENTRAL STREET, SOUTH BERWICK	)	AGREEMENT
YORK COUNTY, MAINE	)	(38 M.R.S.A. § 347-A)
HAZARDOUS WASTE ACTIVITIES)	

- A. Spray Maine failed to determine if wastes generated were hazardous waste, in violation of 06-096 CMR 851(5).
- 1) Specifically, a report by Safety Kleen prepared for Spray Maine dated April 14, 1999 indicated that paint booth filters were hazardous waste with a TCLP analysis indicating a chromium level of 8.42 mg/L, exceeding the regulatory limit of 5 mg/L. Despite this result, Spray Maine disposed of spent paint booth filters as solid waste. During the inspection, Department staff sampled dried paint residue from three paint booths for analysis. The results indicated that the paint residue was hazardous waste with a TCLP chromium level of 41 mg/L.
 - 2) Specifically, Spray Maine failed to conduct hazardous waste determinations for the following containers of useless, unwanted materials or waste:
 - a) One (1) five gallon container of "Catafor CA-80" marked "Corrosive-Flammable" and one (1) one gallon container of "Lenmar" marked "danger extremely flammable" next to a paint booth.
 - b) Numerous containers of unwanted or unusable ignitable waste paints and paint related products in the paint locker. During the inspection, Spray Maine stated that some of the paints had not been used for up to five years and others were described as "odd-ball colors". One (1) container was labeled "Old No Good", another was labeled with a batch date of October 25, 1989 and one (1) was labeled with an expiration date of September 2006.
 - c) Numerous containers of old silk screen inks dating prior to 1986 in the basement, including one labeled "contains lead". Waste with a lead content equal to or greater than 5.0 mg/L (TCPL) is a hazardous waste. On July 15, 2009 Spray Maine notified the Department that waste silk screen inks had been consolidated for disposal as hazardous waste the following week.
 - d) Four (4) one gallon containers of "Oakite 31" in the basement, determined by a Material Safety Data Sheet (MSDS) to have a pH of 1. Waste with a pH of 2.0 or lower is a hazardous waste.
 - e) One (1) half full five gallon container of "Fremont 213" in the basement, determined by a MSDS to have a pH of 13.5. Waste with a pH of 12.5 or higher is a hazardous waste.

IN THE MATTER OF:

SPRAY MAINE, INC.	)	ADMINISTRATIVE CONSENT
4 CENTRAL STREET, SOUTH BERWICK	)	AGREEMENT
YORK COUNTY, MAINE	)	(38 M.R.S.A. § 347-A)
HAZARDOUS WASTE ACTIVITIES)	

- f) Two (2) partial, leaking, bulging and rusted fifteen gallon containers of sodium hydroxide solution, determined by a MSDS to have a pH of 13, in the basement.
- g) One (1) partial five gallon container labeled "Waste Acetone" in the basement. Waste acetone is a listed hazardous waste.
- h) One (1) partial five gallon container of "Texo LP 1521" labeled "Danger: Acidic Product" in the basement.
- i) One (1) badly corroded five gallon container of unknown contents in the basement.
- j) One (1) cardboard box lined with poly sheeting containing waste "Zip-Strip" solvent, an F-listed hazardous waste containing methylene chloride and methanol.
- k) Two (2) full fifty five gallon containers and one (1) approximately one hundred gallon tank of waste water from parts cleaning located in the basement. Subsequently, the Department requested that Spray Maine have a laboratory analysis performed for a sample of the waste water to confirm its waste classification. To date, this analysis has not been received.

B. Spray Maine failed to place hazardous waste in a container that meets the requirements of 06-096 CMR 851(8)(A)(1) and (8)(B)(2).

Specifically, a cardboard box lined with poly sheeting used to strip parts contained waste "Zip-Strip" solvent, an F-listed hazardous waste containing methylene chloride and methanol, as referenced in paragraph 5.A.(2)(j) above. The cardboard box did not meet requirements for a container used to accumulate hazardous waste.

C. Spray Maine offered hazardous waste to an unlicensed transporter and unlicensed disposal facility, in violation of 06-096 CMR 851(7)(A) and (7)(B).

Specifically, Spray Maine's waste analysis records from 1999 and sampling by the Department during the March 17, 2009 inspection demonstrate that waste paint booth filters and dried paint overspray are hazardous waste for chromium. Spray Maine has disposed of these wastes as solid waste through a solid waste transporter and at a facility not licensed to handle hazardous waste.

IN THE MATTER OF:

SPRAY MAINE, INC.	)	ADMINISTRATIVE CONSENT
4 CENTRAL STREET, SOUTH BERWICK	)	AGREEMENT
YORK COUNTY, MAINE	)	(38 M.R.S.A. § 347-A)
HAZARDOUS WASTE ACTIVITIES)	

- D. Spray Maine failed to label containers of hazardous waste with the words “hazardous waste” and the accumulation start date, in violation of 06-096 CMR 851(8)(B)(3).

Specifically, one (1) fifty five gallon container of paint related wastes in the satellite accumulation area (SAA) for the wet paint area was not labeled or dated as required.

Specifically, the containers of hazardous waste described in paragraph 5.A(2)(a) through (k) of this Agreement were not labeled or dated as required.

This is a repeat of a similar violation cited in a Notice of Violation dated August 15, 1997.

- E. Spray Maine failed to keep containers of hazardous waste closed, in violation of 06-096 CMR 851(8)(B)(2) and 40 CFR 265.173.

Specifically, the SAA container for the wet paint area was not closed. It was covered with an unsecured lid at the time of inspection.

Specifically, the poly lined cardboard “container” of waste paint stripper was covered with a loose sheet of cardboard at the time of inspection.

This is a repeat of a similar violation cited in a Notice of Violation dated August 15, 1997.

- F. Spray Maine failed to inspect containers of hazardous waste daily and document inspection findings in a log, in violation of 06-096 CMR 851(13)(D)(1).

Specifically, no inspection of the SAA container had been logged since April 2000 and no inspection of the containers in the 90-day hazardous waste storage area had been logged since May 2004.

This is similar to a violation cited in a Notice of Violation dated August 15, 1997.

- G. Spray Maine failed to store hazardous wastes in containers free from rust, dents or leaks, in violation of 06-096 CMR 851(13)(C)(3).

Specifically, two (2) containers of corrosive waste sodium hydroxide solution in the basement were badly corroded and the contents of one (1) had burst past a hand pump mounted in the bung.

IN THE MATTER OF:

SPRAY MAINE, INC.	)	ADMINISTRATIVE CONSENT
4 CENTRAL STREET, SOUTH BERWICK	)	AGREEMENT
YORK COUNTY, MAINE	)	(38 M.R.S.A. § 347-A)
HAZARDOUS WASTE ACTIVITIES)	

Specifically, several containers of unusable or unwanted ignitable paints and paint products in the paint locker were badly rusted at the time of inspection.

Specifically, one (1) five gallon container in the basement with an illegible label as referenced in paragraph 5.A.(2)(i) above was so badly corroded it was adhered to the floor and could not be moved without possible rupture.

- H. Spray Maine failed to segregate incompatible hazardous wastes and materials, in violation of 06-096 CMR 851(13)(C)(6).

Specifically, a five gallon container of waste "Fremont 213" with a pH of 13.5 was stored immediately adjacent to a fiber container of "Oakite Cryscoat 847". Spillage of Oakite Cryscoat was evident on the floor in the vicinity of the containers. The MSDS for Oakite Cryscoat states it is incompatible with highly alkaline materials and the manufacturer informed the Department it had not been marketed for over twenty years.

Specifically, two (2) badly corroded, leaking and bulging thirty gallon containers of corrosive sodium hydroxide solution, determined by a MSDS to have a pH of 13, were stored immediately adjacent to four (4) one gallon containers of "Oakite 31" with a pH of 1.

- I. Spray Maine failed to containerize universal waste lamps, in violation of 06-096 CMR 850 (3)(A)(13)(e)(xxiii)(a).

Specifically, approximately ten (10) lamps stored behind a furnace and one (1) located in a pile of debris in the basement were not containerized at the time of inspection.

- J. Spray Maine failed to label containers of universal wastes as required, in violation of 06-096 CMR 850(3)(A)(13)(e)(xxiii)(e).

Specifically, three (3) boxes of universal waste lamps located behind a furnace were not labeled at the time of inspection.

6. On June 8, 2009, the Department issued a Notice of Violation (NOV) to Spray Maine for the activities described in Paragraph 5 of this Agreement, in accordance with 38 M.R.S.A. § 347-A(1)(B). In the NOV, the Department requested that Spray Maine provide a detailed inventory of unwanted, unusable or expired materials including hazardous waste determinations, perform corrective actions, and respond to the Department in writing within thirty (30) days describing the corrective actions undertaken to address each of the violations cited.

IN THE MATTER OF:

SPRAY MAINE, INC.	)	ADMINISTRATIVE CONSENT
4 CENTRAL STREET, SOUTH BERWICK	)	AGREEMENT
YORK COUNTY, MAINE	)	(38 M.R.S.A. § 347-A)
HAZARDOUS WASTE ACTIVITIES)	

7. On July 15, 2009, Spray Maine submitted to the Department a faxed response to the NOV, indicating the corrective actions undertaken or planned to address the violations. The response did not meet the thirty (30) day deadline required in the NOV nor was a detailed inventory of unwanted, unusable or expired materials provided in accordance with the NOV. Spray Maine indicated its corrective actions included the following:
 - A. Two (2) fifty five gallon containers of hazardous paint waste and four (4) containers of universal waste lamps were shipped on April 1, 2009 and the manifests were submitted to the Department.
 - B. The drum in the wet paint area SAA was properly labeled, dated, and closed.
 - C. Daily inspections of hazardous waste containers were being conducted.
 - D. Spent paint booth filters were containerized and marked as hazardous waste.
 - E. Unwanted, unusable or expired waste inks, paint related products and corrosives were consolidated or over-packed as appropriate and were due for shipment during the week of July 20, 2009. Subsequently, Spray Maine submitted to the Department a copy of the hazardous waste manifest dated July 22, 2009, documenting the waste shipment.
 - F. Waste water from parts cleaning had been profiled and was awaiting shipment as non-hazardous_oily water. Subsequently, the Department requested that Spray Maine have a laboratory analysis performed for a sample of the waste water to confirm its waste classification. The analysis indicated the waste water was nonhazardous.
8. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (“Board”), which is part of the Department.
9. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
10. To resolve the violations referenced in Paragraph 5 of this Agreement, Spray Maine agrees to:
 - A. Henceforth, comply with 38 M.R.S.A. Sections 1301 through 1319-Y and all applicable standards of the Rules, Chapters 850 through 857, pertaining to generators of hazardous waste.

IN THE MATTER OF:

SPRAY MAINE, INC.	)	ADMINISTRATIVE CONSENT
4 CENTRAL STREET, SOUTH BERWICK	)	AGREEMENT
YORK COUNTY, MAINE	)	(38 M.R.S.A. § 347-A)
HAZARDOUS WASTE ACTIVITIES)	

- B. Immediately and henceforth conduct hazardous waste determinations pursuant to 06-096 CMR 851(5) for all unusable or unwanted materials and properly dispose of any waste meeting a hazardous waste characteristic or listing via a Maine licensed hazardous waste transporter. This shall include paint booth filters and overspray waste unless paints containing chromium and other hazardous wastes are eliminated from use and additional testing indicates the filters and overspray are not hazardous.
- C. Immediately cease accumulating or packaging hazardous wastes in containers not meeting applicable Federal Department of Transportation regulations pursuant to 06-096 CMR 851(8)(B)(2) and (8)(A)(1).
- D. Immediately and henceforth label all containers of hazardous waste with the words "hazardous waste" and the accumulation start date pursuant to 06-096 CMR 851(8)(B)(3).
- E. Immediately and henceforth keep all containers of hazardous waste securely closed unless adding or removing waste pursuant to 06-096 CMR 851(8)(B)(2).
- F. Immediately and henceforth inspect all containers of hazardous waste daily and record the results in a log pursuant to 06-096 CMR 851(13)(D)(1).
- G. Immediately cease storage of waste in any containers that are rusted, bulging or leaking pursuant to 06-096 851(13)(C)(3).
- H. Immediately and henceforth segregate all incompatible hazardous wastes and materials by use of berms, spill pallets or segregated storage areas pursuant to 06-096 CMR 851(13)(C)(6).
- I. Henceforth, comply with the special requirements for universal waste standards pursuant to the Rules, 06-096 CMR 850(3)(A)(13) for all universal waste, including containerizing universal waste lamps and properly labeling the containers and securely sealing them when full.
- J. Immediately upon Spray Maine's signature of this Agreement, pay to the *Treasurer, State of Maine c/o Hazardous Waste Fund*, a civil monetary penalty in the amount of Twenty One Thousand Dollars (\$21,000.00).

IN THE MATTER OF:

SPRAY MAINE, INC.	)	ADMINISTRATIVE CONSENT
4 CENTRAL STREET, SOUTH BERWICK	)	AGREEMENT
YORK COUNTY, MAINE	)	(38 M.R.S.A. § 347-A)
HAZARDOUS WASTE ACTIVITIES)	

11. The Department and Office of the Attorney General grant a release of their causes of action against Spray Maine for the specific violations listed in Paragraph 5 of this Agreement on the express condition that all actions listed in Paragraph 10 of this Agreement are completed in accordance with the express terms and conditions of this Agreement, except that no release is granted for any contamination of surface waters, ground waters, soils, sediment or ambient air as a result of the violations set forth in this Agreement. This Agreement shall not prohibit the Department from requiring additional corrective measures or other remedial actions if the Department determines that such action is necessary to protect public health, safety, or the environment. This limited release shall not become effective until all requirements of this Agreement are satisfied.
12. Non-compliance with this Agreement voids the release set forth in Paragraph D of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S.A. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.
13. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, and orders including but not limited to licensing requirements.
14. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, successors, and assigns.

[Signature Page Follows]

IN THE MATTER OF:

SPRAY MAINE, INC.)
4 CENTRAL STREET, SOUTH BERWICK)
YORK COUNTY, MAINE)
HAZARDOUS WASTE ACTIVITIES)

ADMINISTRATIVE CONSENT
AGREEMENT
(38 M.R.S.A. § 347-A)

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of Nine (9) pages:

SPRAY MAINE, INC.

BY: Christopher Donahue, President
Christopher Donahue, President

DATE: 2-2-10

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
Susan M. Lessard, Chair

DATE: _____

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____
Peter LaFond, Assistant Attorney General

DATE: _____