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In the Matter of:

William B. Winger and  
William Winger Painting, Inc.  
UTR000011023

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**STIPULATION AND CONSENT ORDER  
No. 2305049**

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This **STIPULATION AND CONSENT ORDER** (CONSENT ORDER) is issued by the **DIRECTOR OF THE UTAH DIVISION OF WASTE MANAGEMENT AND RADIATION CONTROL** (Director) pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code § 19-6-101, *et seq.* and Utah Hazardous Waste Rules (the Rules), R315-260 through R315-273 of the Utah Administrative Code.

**JURISDICTION**

1. The Director has jurisdiction over the subject matter of this **CONSENT ORDER** pursuant to Utah Code §§ 19-6-107 and 19-6-112 and jurisdiction over William Winger Painting, Inc., owned and operated by William B. Winger. William Winger Painting, Inc. and the Director are referred to herein as “Parties” and individually as a “Party” to this agreement.

**FINDINGS**

2. William Winger Painting, Inc. is a domestic corporation registered to conduct business in Utah and is a “person” as defined in Utah Code § 19-1-103(4).
3. The William Winger Painting, Inc. (Winger Painting) facility is a commercial facility located at 312 West Anderson Avenue, Murray, Salt Lake County, Utah.
4. William B. Winger is a “person” as defined in Utah Code § 19-1-103(4) and is subject to all applicable provisions of the Utah Administrative Code (the Rules) and the Act. William B. Winger is the President and Director of William Winger Painting, Inc.
5. In RCRAInfo, William B. Winger is identified as the owner and Winger Painting Inc. is identified as the operator of the Winger Painting facility. The Winger Painting facility is operated under the provisions of the Rules.
6. On April 27, 2010, Winger Painting submitted an EPA Form 8700-12 to the Director notifying as a large quantity generator (LQG) of D001, F003, and F005 hazardous waste.

7. On January 25, 2011, a representative of the Director inspected Winger Painting. Significant amounts of paint and paint-related materials stored onsite were described by the inspector as degraded, out of spec, or no longer useful. The inspector also documented three violations of the hazardous waste rules applicable to large quantity generators.
8. On April 18, 2011, Winger Painting updated its generator status to small quantity generator of D001, F003, and F005 hazardous waste.
9. On July 11, 2018, a representative of the Director inspected Winger Painting. As a result of this inspection, the Director issued a Warning Letter on October 15, 2018 (DSHW 2018-009662). In the Warning Letter, the Director requested that William Winger Painting, Inc. take corrective actions to address findings identified during the July 11, 2018, compliance evaluation inspection conducted at 312 West Anderson Ave, Murray, Utah.

The Warning Letter described the majority of the paint as old, degraded, unusable, and waste-like. The Warning Letter requested submission of a written plan and schedule for compliance to the Director by November 7, 2018.

9.1. Mr. Winger explained to a representative of the Director that he had not received the October 15, 2018 Warning Letter. The Warning Letter was sent to William Winger, Registered Agent of William Winger Painting, Inc. at 3116 South 300 West, Salt Lake City, Utah. That address was no longer being used by Mr. Winger's business. The Director made a second attempt to serve notice of Warning Letter Number 1810084 on December 18, 2018 (DSHW-2018-011768). Mr. Winger responded to the Warning Letter sent to Michelle Daluz, Registered Agent of William Winger Painting, Inc. on January 19, 2019.

9.2. In his January 19, 2019 response, Mr. Winger corrected the location of the paint storage as 312 West Anderson Avenue, Murray, UT, and asserted his claim that the majority of the paint in storage was still a viable, usable product. He also stated the following: *"I am currently in the process of evaluating each container in storage to determine which items may be considered to be hazardous waste. I have been in contact with contaminated waste handlers Chuck Lawrence with Clear Harbor Environmental[sic] and Chris Root with Envirocare USA for their help in determining an effective, safe process to dispose of items deemed hazardous. I will make every possible effort to meet the required 180-day deadline. This may be contingent on receiving required approvals and the disposal vendors' availability."*

10. On November 16, 2022, representatives of the Director inspected Winger Painting. The inspectors documented the following violations of the Act and the Rules:

- 10.1. Utah Administrative Code R315-262-11 requires that anyone who generates a solid waste as defined in Utah Administrative Code R315-261-2 shall make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to the applicable regulations. Hazardous waste determinations are required to be made at the time of generation. The inspectors documented that no hazardous waste determinations had been made on thousands of gallons of un-usable paint and paint-related materials stored in three tractor trailers since 1988.
- 10.2. Utah Administrative Code R315-262-16(b) requires that a small quantity generator accumulate hazardous waste on site for no more than one hundred eighty (180) days. The inspectors documented three tractor trailers containing hazardous waste paint that have been stored in lieu of disposal since at least 2011.
- 10.3. Utah Administrative Code R315-262-16(b)(2) states that if a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator must immediately transfer the hazardous waste from a container in poor condition or a leaking container to a container that is in good condition. The inspectors documented that many of the containers or boxes in which multiple cans of paint and solvents were packaged showed evidence of leakage.
- 10.4. Utah Administrative Code R315-262-16(b)(6) requires a small quantity generator of hazardous waste to mark or label its containers with the words “Hazardous Waste” and an indication of the hazards of the contents. Winger Painting failed to mark or label its containers of hazardous waste paint and hazardous waste paint-related materials with the words “Hazardous Waste” and an indication of the hazards of the contents of the containers.
- 10.5. Utah Administrative Code R315-262-16(b)(8)(vi)(A) requires a small quantity generator to attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals. The inspectors documented Winger Painting failed to make arrangements with local police, emergency responders, and hospitals to respond to emergency situations.
- On November 26, 2022, Mr. Winger sent documentation showing that he has subsequently provided notifications to local responders and attempted to make arrangements with local responders as required.*
11. On February 23, 2023, and on behalf of Winger Painting, Mr. Winger and Mrs. Michelle Winger met with representatives of the Director to discuss disposing of the hazardous waste paint and paint-related material being stored at the Winger Painting facility.

12. On March 15, 2023, Michelle Winger provided an inventory of the hazardous waste paint and paint-related material in storage at the facility. Winger Painting was storing 2,230 gallons of hazardous waste paint and hazardous waste paint-related materials in three tractor trailers inside a concrete block containment structure at 312 West Anderson Avenue in Murray, Utah.
  - a. As of September 30, 2023, 440 gallons have been disposed of, leaving 1,790 gallons to be disposed of.
13. On March 28, 2023, representatives of the Director visited the Winger Painting facility to assist Mr. Winger and his son, Ryan Winger, with preparing to transfer hazardous waste paint from 1-gallon and 5-gallon containers into 55-gallon containers. The representatives advised the Wingers to obtain adequate spill control and response equipment, advised them on hazardous waste shipping container requirements, and reviewed uniform hazardous waste manifest requirements under the Act and the Rules.

## STIPULATION AND CONSENT ORDER

14. This CONSENT ORDER has been negotiated in good faith and the Parties now wish to fully resolve issues identified in previous inspections, Warning Letter Number 1810084, and the November 16, 2022, inspection without further administrative or judicial proceedings.
15. The Parties hereby stipulate that William Winger Painting, Inc. may manage the hazardous waste paint and hazardous waste paint-related materials, identified in Item 12 without a permit as described below.
- 15.1. Winger Painting shall transfer paint from individual containers into 55-gallon drums as follows:
- i. Winger Painting shall “pour down” paint from 1-gallon and 5-gallon containers into 55-gallon drums. The waste transfer will be conducted on a bermed, impervious surface next to the paint storage building and trailers. Winger Painting shall only combine compatible waste types.
  - ii. Winger Painting shall have spill response materials adequate to prevent release of hazardous waste paint and paint-related materials to the surrounding environment near the transfer bermed area.
  - iii. Winger Painting shall have an operable, portable fire extinguisher available while hazardous waste paint and paint-related materials are accumulated and handled.
  - iv. Each 55-gallon drum of hazardous waste paint and paint-related materials shall be labeled “Hazardous Waste” and shall be marked or labeled with an indication of the hazards of the contents of the containers (e.g., “Flammable”).
  - v. Winger Painting shall mark each container with the date when waste is first placed in the 55-gallon container. This date is the accumulation start date.
  - vi. Winger Painting shall inspect the containers of hazardous waste weekly and document the inspection to ensure that the containers are in good condition (e.g., not bulging) and are not leaking. If Winger Painting discovers a container in poor condition or if a container is leaking, Winger Painting shall transfer the waste to a container in good condition.

16. Winger Painting shall train all persons, including family members, performing work for Winger Painting, on spill cleanup and emergency response for the waste transfer and storage operation.
17. Winger Painting shall contract with a hazardous waste transporter to transport hazardous waste paint and paint-related materials offsite for disposal.
  - a. All containers shall be shipped offsite within ninety (90) days of their accumulation start date. Winger shall document delays in shipping caused by the hazardous waste transporter or the destination facility. Copies of email messages from the transporter and/or destination facility are acceptable documentation.
  - b. Winger Painting must ensure that Winger Painting's EPA identification (UTR000011023) is entered in block 1 on each manifest used to transport hazardous waste from the Winger Painting facility.
  - c. Winger Painting shall retain a copy of each hazardous waste manifest in accordance with Utah Administrative Code R315-262-40(a).
18. The remaining 1,790 gallons of hazardous waste paint and paint-related materials currently in storage in the three tractor trailers in the cinderblock containment structure shall be shipped offsite for disposal as hazardous waste before September 30, 2024. A minimum of 500 gallons of hazardous waste shall be shipped offsite for disposal by the end of each quarter (December 2023, March 2024, June 2024, and September 2024). Winger Painting shall provide quarterly documentation of compliance with this schedule.
  - a. Delays caused by the hazardous waste transporter, the destination facility and the weather may be cause to extend the deadline as long as Winger has made good-faith efforts, including continuing to pour down the paint and requesting waste pickups, to meet this schedule. Winger shall document delays caused by the hazardous waste transporter or the destination facility.
19. After removing, consolidating, and disposing of all paint in the three tractor trailers, Winger Painting shall ensure that no residual paint waste or other hazardous waste that has the potential to impact human health, or the environment remains. Any necessary cleanup must be performed in accordance with Utah Administrative Code R315-101.

### **EFFECT OF CONSENT ORDER**

20. For the purpose of this CONSENT ORDER, the parties agree and stipulate to the above stated facts. The obligations in this CONSENT ORDER apply to and are binding upon the Division of Waste Management and Radiation Control and upon William Winger Painting, Inc. and any of William Winger Painting, Inc.'s successors, assigns, or other entities or persons otherwise bound by law.
21. The stipulations contained herein are for the purposes of settlement and shall not be considered admissions by any Party and shall not be used by any person related or unrelated to this CONSENT ORDER for purposes other than determining the basis of this CONSENT ORDER. Nothing contained herein shall be deemed to constitute a waiver by the State of Utah of its right

to initiate enforcement action, including civil penalties, against William Winger Painting, Inc. in the event of future non-compliance with this CONSENT ORDER, with the Act, and with the Rules; nor shall the State of Utah be precluded in any way from taking appropriate action should such a situation arise again at the Winger Painting facility. However, entry into this CONSENT ORDER shall relieve Winger Painting of all liability for violations which did arise or could have arisen prior to the Effective Date for matters specifically addressed in this CONSENT ORDER.

22. On behalf of himself and William Winger Painting, Inc., William B. Winger consents to and will not challenge issuance of this CONSENT ORDER or the Director's jurisdiction to enter and enforce this ORDER.

#### **EFFECTIVE DATE**

23. This CONSENT ORDER shall become effective upon the date of execution by the Director.

#### **PUBLIC PARTICIPATION**

24. This CONSENT ORDER shall be subject to public notice and comment for a period of at least thirty (30) days ("Comment Period") in accordance with Utah Administrative Code R315-124-34. The Director reserves the right to withdraw or withhold its consent if any comment received during the Comment Period discloses facts or consideration indicating the CONSENT ORDER is inappropriate, improper, or inadequate.

**SIGNATORY**

25. The undersigned representative of William Winger Painting, Inc. certifies that the representative is authorized to enter into this CONSENT ORDER and to execute and legally bind William Winger Painting, Inc.

Pursuant to the Utah Solid and Hazardous Waste Act, Utah Code § 19-6-101, *et seq.*, the parties hereto mutually agree and consent to STIPULATION AND CONSENT ORDER NO. 2305049 as evidenced below:

William Winger Painting, Inc. and  
William B. Winger, an individual

THE STATE OF UTAH  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF WASTE MANAGEMENT  
AND RADIATION CONTROL

\_\_\_\_\_  
William B. Winger, President  
William Winger Painting, Inc.  
and on his own behalf

\_\_\_\_\_  
Douglas J. Hansen, Director  
Division of Waste Management and Radiation Control

Date: \_\_\_\_\_

Date: \_\_\_\_\_

