



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 30 2016

REPLY TO THE ATTENTION OF:

**ELECTRONIC TRANSFER**  
**VIA EMAIL**

Ms. Katherine Rahill  
Senior Legal Counsel – Health, Safety and Environment & Regulatory Affairs  
Akzo Nobel Coatings, Inc.  
525 West Van Buren Street  
Chicago, Illinois 60607

Re: Akzo Nobel Coatings, Inc., Huron, Ohio, Consent Agreement and Final Order  
Docket No. EPCRA-05-2016-0021

Dear Ms. Rahill:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on September 30, 2016.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$37,212 in the manner prescribed in paragraph 61, and reference your check with the docket number EPCRA-05-2016-0021.

Your payment is due on October 31, 2016.

Please feel free to contact James Entzminger, at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Josh Zaharoff, Assistant Regional Counsel, at (312) 886-4460. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

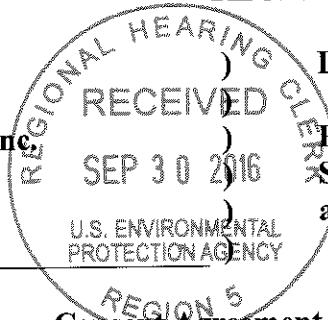
In the Matter of:

Akzo Nobel Coatings, Inc.  
Huron, Ohio,

Respondent.

Docket No EPCRA-05-2016-0021

Proceeding to Assess a Civil Penalty Under  
Section 325(c)(1) of the Emergency Planning  
and Community Right-to-Know Act of 1986



Consent Agreement and Final Order  
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Akzo Nobel Coatings, Inc., a Delaware corporation doing business in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed, including, but not limited to, an MSDS.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$32,500 per day of violation that occurred after March 15, 2004, through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

#### **Factual Allegations and Alleged Violations**

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 300 Sprowl Road, Huron, Ohio (“facility”).

17. At all times relevant to this CAFO, Respondent was an employer at the facility.

18. Respondent's facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

19. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Sulfuric acid is classified as a physical or health hazard or hazard not otherwise classified.

21. Sulfuric acid (CAS #7664-93-9) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

22. At all times relevant to this CAFO, Respondent produced, used or stored sulfuric acid at the facility.

23. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

24. Sulfuric acid (CAS #7664-93-9) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

25. Lead is classified as a physical or health hazard or hazard not otherwise classified.

26. Lead (CAS #7439-92-1) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

27. At all times relevant to this CAFO, Respondent produced, used or stored lead at the facility.

28. Lead (CAS #7439-92-1) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

29. During at least one period of time in calendar year 2013, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

30. During at least one period of time in calendar year 2013, lead was present at the facility in an amount equal to or greater than the minimum threshold level.

31. During at least one period of time in calendar year 2014, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

32. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid.

33. OSHA requires Respondent to prepare, or have available, an MSDS for lead.

34. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility a completed emergency and hazardous chemical inventory form, including sulfuric acid and lead, on or before March 1, 2014, for calendar year 2013.

35. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility a completed emergency and hazardous chemical inventory form, including sulfuric acid, on or before March 1, 2015, for calendar year 2014.

36. At all times relevant to this CAFO, the Ohio Environmental Protection Agency was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

37. At all times relevant to this CAFO, the Erie County LEPC was the LEPC for Erie County, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

38. At all times relevant to this CAFO, the Huron Fire Department was the fire department with jurisdiction over the facility.

**Count 1** (EPCRA 312/SERC)

39. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

40. On June 9, 2016, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2013.

41. On June 17, 2016, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid used for pH control for calendar year 2013.

42. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead after March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 2** (EPCRA 312/LEPC)

43. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

44. On June 9, 2016, Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2013.

45. On June 17, 2016, Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid used for pH control for calendar year 2013.

46. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2014, for

calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 3** (EPCRA 312/fire department)

47. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

48. On June 9, 2016, Respondent submitted to the Huron Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2013.

49. On June 17, 2016, Respondent submitted to the Huron Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid used for pH control for calendar year 2013.

50. Each day Respondent failed to submit to the Huron Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 4** (EPCRA 312/SERC)

51. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

52. June 9, 2016, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid used for pH control for calendar year 2014.

53. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid used for pH control after March 1,



2015, for calendar year 2014 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 5** (EPCRA 312/LEPC)

54. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

55. On June 9, 2016, Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid used for pH control for calendar year 2014.

56. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid used for pH control by March 1, 2015, for calendar year 2014 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 6** (EPCRA 312/fire department)

57. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

58. On June 9, 2016, Respondent submitted to the Huron Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid used for pH control for calendar year 2014.

59. Each day Respondent failed to submit to the Huron Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid used for pH control by March 1, 2015, for calendar year 2014 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Civil Penalty**

60. Complainant has determined that an appropriate civil penalty to settle this action is \$37,212 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

61. Within 30 days after the effective date of this CAFO, Respondent must pay a \$37,212 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire should read:  
"D68010727 Environmental Protection Agency"

In the comment area of the electronic funds transfer, state the following: Akzo Nobel Coatings, Inc. and the docket number of this CAFO.

62. Respondent must send a copy of the payment to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

James Entzminger (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Josh Zaharoff (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

63. This civil penalty is not deductible for federal tax purposes.

64. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

65. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

66. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: zaharoff.josh@epa.gov (for Complainant), and

Katherine.Rahill@akzonobel.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

67. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

68. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

69. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

70. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws and regulations.

71. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

72. The terms of this CAFO bind Respondent and its successors and assigns.


73. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

74. Each party agrees to bear its own costs and attorney's fees in this action.

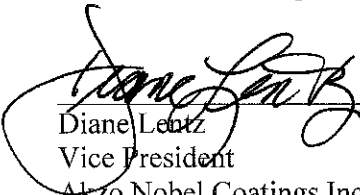
75. This CAFO constitutes the entire agreement between the parties.

**Akzo Nobel Coatings, Inc., Respondent**

12-SEPTEMBER-2016  
Date


  
\_\_\_\_\_  
Greg Bengtson  
Vice President  
Akzo Nobel Coatings Inc.

9-12-16  
Date

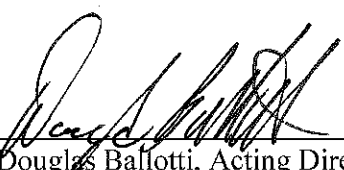
  
\_\_\_\_\_  
Diane Lentz  
Vice President  
Akzo Nobel Coatings Inc.

**U.S. Environmental Protection Agency, Complainant**

9-28-2016  
Date

  
\_\_\_\_\_  
M. Cecilia Moore, Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

9/28/2016  
Date


  
\_\_\_\_\_  
Douglas Ballotti, Acting Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Akzo Nobel Coatings, Inc., Huron, Ohio**  
**Docket No. EPCRA-05-2016-0021**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/29/14  
Date

  
Robert A. Kaplan  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

In the Matter of: Akzo Nobel Coatings, Inc., Huron, Ohio  
Docket No. EPCRA-05-2016-0021

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on September 30, 2016 in the following manner to the addressees:

Copy by email to  
Respondent

Katherine Rahill  
Katherine.Rahill@akzonobel.com

Copy by E-mail to  
Attorney for Complainant:

Josh Zaharoff  
Zaharoff.josh@epa.gov

And

James Entzminger  
Entzminger.james@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
Coyle.ann@epa.gov

Dated: September 30, 2016

  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5