

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Nupro Industries Corporation
2925 E. Ontario Street
Philadelphia, PA 19134**

Respondent

**Nupro Industries Corporation
2925 E. Ontario Street
Philadelphia, PA 19134**

Facility

Docket No. EPCRA-03-2017-0201

CONSENT AGREEMENT

**Proceeding under EPCRA §§ 313 and,
325(c), 42 U.S.C. §§ 11023 and 11045(c)**

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2017 SEP 25 PM 4:17

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”), and Nupro Industries Corporation (“Respondent”), pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing EPCRA § 313, as set forth at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Pursuant to 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively, “CAFO”), simultaneously commence and conclude this proceeding to resolve violations of EPCRA § 313, 42 U.S.C. § 11023, and implementing regulations promulgated thereunder, as alleged herein, by Respondent at its facility located at 2925 E. Ontario Street, Philadelphia, Pennsylvania 19134.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

3. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
4. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

Findings of Fact and Conclusions of Law

7. In accordance with Sections 22.13(b) and .18(b)(2) of the Consolidated Rules of Practice, Complainant adopts the following findings of fact and conclusions of law.
8. EPCRA Section 313(a), 42 U.S.C. § 11023(a), requires subject owners or operators of any facility that, in any calendar year, manufactures, processes or otherwise uses a toxic chemical listed under EPCRA Section 313(c), 42 U.S.C. § 11023(c), in quantities exceeding a regulatory threshold established under EPCRA Section 313(f), 42 U.S.C. § 11023(f), to complete and submit a toxic chemical release inventory report (*i.e.*, "Form R" or "Form A") for each such listed toxic chemical. Pursuant to EPCRA Section 313(a), 42 U.S.C. § 11023(a), each required Form R or Form A must include the information required under Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), and must be submitted to EPA and to the designated State agency by July 1 of the year following the year for which such toxic inventory report is required.
9. EPCRA Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide, in relevant and applicable part, that a facility which meets the following criteria for a calendar year is a "covered facility" for that calendar year and must report under 40 C.F.R. § 372.30: [a] the facility has 10 or more full-time employees; [b] the facility is in a Standard Industrial Classification ("SIC") (as in effect on January 1, 1987) major group or industrial code listed in 40 C.F.R. § 372.23(a), for which the corresponding North American Industrial Classification System ("NAICS") (as in effect on January 1, 2007, for reporting year 2008 and thereafter) subsector and industry codes are listed in 40 C.F.R. § 372.23(b) and (c) by virtue of the fact that the facility is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary NAICS subsector or industry code listed in 40 C.F.R. § 372.23(b) or 40 C.F.R. § 372.23(c); and [c] the facility manufactured (including imported), processed, or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 C.F.R. § 372.25, 372.27, or 375.28.
10. 40 C.F.R. § 372.30(a) provides, in relevant part, that for each toxic chemical known

by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in 40 C.F.R. § 372.25, § 372.27, or § 372.28 at its covered facility for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1) or Form A (EPA Form 9350-2) in accordance with the instructions referred to in 40 C.F.R. Part 372, Subpart E.

11. 40 C.F.R. § 372.30(d) provides, in relevant part, that: “[e]ach report under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year.”
12. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define “facility” to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.
13. Section 329(7) of EPCRA, 42U.S.C. § 11049(7), defines “person” to include any corporation.
14. Respondent is incorporated in the Commonwealth of Pennsylvania and is a “person” as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
15. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a fats and oils refining plant located at 2925 E. Ontario Street, Philadelphia, Pennsylvania 19134 (“Facility”).
16. Respondent’s Facility is a “facility” as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
17. During each of calendar years 2013 through 2014, Respondent employed 10 or more full-time employees at the Facility.
18. During each of calendar years 2013 through 2014, the Facility had a SIC code of 2076, corresponding to processing oils for non-edible purposes.
19. For purposes of toxic chemical release reporting, the Facility was a “covered facility,” within the meaning of 40 C.F.R. § 372.22, and required to file a toxic chemical release report under 40 C.F.R. § 372.30(c), in the calendar years 2013 and 2014.

Count I – Methanol 2013

20. The allegations of Paragraphs 1 through 19, above, are incorporated by reference as though fully set forth herein.
21. “Methanol” is a chemical listed in 40 C.F.R. § 372.65(a) and a “toxic chemical” as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and

in 40 C.F.R. § 372.3.

22. As set forth in Section 313(f)(2) of EPCRA, 42 U.S.C. § 11023(f)(2), and 40 C.F.R. § 372.28(a)(1), the reporting threshold amount for Methanol processed at a facility is 25,000 pounds.
23. Respondent processed more than 25,000 pounds of Methanol at the Facility during calendar year 2013.
24. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania, by July 1 of 2014, a completed Form R or Form A for the Methanol processed at the Facility during calendar year 2013.
25. Respondent never filed a Form A for the toxic chemical Methanol processed at the Facility during calendar year 2013 with the Administrator of EPA or the Commonwealth of Pennsylvania.
26. Respondent filed a complete Form R for the toxic chemical Methanol processed at the Facility during calendar year 2013 with the Administrator of EPA and the Commonwealth of Pennsylvania on or about March 3, 2017.
27. Respondent's failure to timely file, by July 1, 2014, a complete Form R or Form A with EPA or the Commonwealth of Pennsylvania for the toxic chemical Methanol processed at the Facility during calendar year 2013 constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count II – Methanol 2014

28. The allegations of Paragraphs 1 through 27, above, are incorporated by reference as though fully set forth herein.
29. Respondent processed more than 25,000 pounds of Methanol at the Facility during calendar year 2014.
30. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania, by July 1 of 2015, a completed Form R or Form A for the Methanol processed at the Facility during calendar year 2014.
31. Respondent never filed a Form A for the toxic chemical Methanol processed at the Facility during calendar year 2014 with the Administrator of EPA or the Commonwealth of Pennsylvania.
32. Respondent filed a complete Form R for the toxic chemical Methanol processed at the Facility during calendar year 2014 with the Administrator of EPA and the

Commonwealth of Pennsylvania on or about March 3, 2017.

33. Respondent's failure to timely file, by July 1, 2015, a complete Form R or Form A with EPA or the Commonwealth of Pennsylvania for the toxic chemical Methanol processed at the Facility during calendar year 2014 constitutes one violation of Section 313 of EPCRA, 42 U.S.C. §11023, and 40 C.F.R. § 372.30.

Settlement

34. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA § 313, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, violations of Section 313 of EPCRA, 42 U.S.C. § 11023, occurring between January 12, 2009 and November 2, 2015 are subject to a civil penalty of up to \$37,500 per violation, and violations occurring after November 2, 2015 are subject to a civil penalty of up to \$53,907 per violation.
35. Respondent agrees to pay a civil penalty in the amount of **NINE THOUSAND NINE HUNDRED AND THIRTY DOLLARS (\$9,930.00)** in settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations alleged and set forth in this CAFO. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO signed by EPA. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
36. The civil penalty settlement amount set forth in Paragraph 35, immediately above, is reasonable and is based upon complainant's consideration of the statutory factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (April 12, 2001). Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
37. Payment of the civil penalty amount set forth in Paragraph 35, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 38 through 41, below, by either cashier's check, certified check, or

electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action (*Docket No. EPCRA-03-2017-0201*);
- b. All checks shall be made payable to "**United States Treasury**";
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33

33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking

Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

- h. On-Line Payment Option:

<https://www.pay.gov/public/home>

1. You **DO NOT** need a user name and password or account.
2. Enter **SFO 1.1** in the form search box on the top left side of the screen.
3. Open the form and follow the on-screen instructions.
4. Select your type of payment from the "Type of Payment" drop down menu.
5. Based on your selection, the corresponding line will open and no longer be shaded gray.
6. Enter the docket number, invoice number or other corresponding information into the field.

- i. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

- j. At the time of payment, Respondent shall simultaneously send a notice of payment, *including a copy of the check or electronic wire transfer, as applicable*, to:

Jeffrey S. Nast, Esq.
Sr. Assistant Regional Counsel
Waste and Chemical Law Branch (3RC30)
U.S. EPA, Region III
1650 Arch Street

Philadelphia, PA 19103-2029

and

Ms. Bevin Esposito
Acting Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
39. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
40. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
41. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
42. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certification

43. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.

Other Applicable Laws

44. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

45. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil penalties for the specific violations of EPCRA Section 313, 42 U.S.C. § 11023, alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Scope of Settlement

46. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with the CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

47. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

48. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

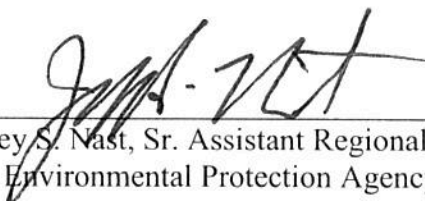
Entire Agreement

49. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For the Respondent:

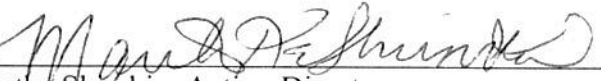
Date: 9/13/17 By: 
Alan S. Berg, Jr., Executive Vice President
Nupro Industries Corporation

For the Complainant:

Date: 9/14/17 By: 
Jeffrey S. Nast, Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III

After reviewing the EPA Findings of Fact, Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9-20-2017

By: 
Martha Shimkin, Acting Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Nupro Industries Corporation
2925 E. Ontario Street
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Respondent

**Nupro Industries Corporation
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Facility

Docket No. EPCRA-03-2017-0201

FINAL ORDER

**Proceeding under EPCRA §§ 313 and,
325(c), 42 U.S.C. §§11023 and 11045(c)**

FINAL ORDER


Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Nupro Industries Corporation have executed a document entitled Consent Agreement, which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (April 12, 2001), the statutory factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C), and the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023.

NOW, THEREFORE, PURSUANT TO Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **NINE THOUSAND NINE HUNDRED THIRTY DOLLARS (\$9,930.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 21, 2017
Date




Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the Consent Agreement/Final Order, Docket No. EPCRA-03-2017-0201, and associated enclosures, have been hand delivered and filed with the EPA Region III Regional Hearing Clerk on the date below, and that copies of the same were sent via UPS expedited delivery to:

Mr. Robert A. Hopkins, President, COO
Nupro Industries Corp
2925 E. Ontario Street
Philadelphia, PA 19134
(215) 739-1291, rhopkins@neatsfootoil.com

9/25/17
Date



Jeffrey S. Nast (3RC30)
St. Asst. Regional Counsel
U.S. EPA , Region III
(215) 814-2652