



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No. 7007 3020 0000 9806 7951
Return Receipt Requested

Re: EPCRA-9-2009-0002

Date:

MAR 31 2009

Mr. Gregory Conrood
Vice-President & Corporate Controller
Barry-Wehmiller Companies, Inc.
8020 Forsyth Boulevard
St. Louis, Missouri 63105

Dear Mr. Conrood:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R. Section 22.13 and 22.18 which contains the terms of the settlement reached with Edgar Coral of the EPA Region 9 Office of Regional Counsel. Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case. If you have any questions, please contact Mariela Lopez at (415) 972-3771.

Sincerely,

Enrique Manzanilla
Director
Communities and Ecosystems Division

Enclosure

FILED

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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

1 NANCY J. MARVEL
Regional Counsel

2 EDGAR P. CORAL
3 Assistant Regional Counsel
4 U. S. Environmental Protection Agency
Region IX
5 75 Hawthorne Street
San Francisco, CA 94105
6 (415) 972-3898

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:

) Docket No. EPCRA-09-2009- 0002

11)
12 Angelus Sanitary Can Machinery Co.,)

) CONSENT AGREEMENT
) AND FINAL ORDER

13 Respondent.)
14)

) pursuant to 40 C.F.R. §§ 22.13(b),
) 22.18(b)(2), and 22.18(b)(3)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Angelus
17 Sanitary Can Machinery Company (the "Respondent") agree to settle this matter and consent to
18 the entry of this Consent Agreement and Final Order ("CAFO").

19 A. AUTHORITY AND PARTIES

20 1. This is a civil administrative action brought under Section 325(c) of the Emergency
21 Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for
22 assessment of a civil administrative penalty against Respondent for its failure to submit timely,
23 complete and correct Toxic Chemical Release Inventory Forms for calendar years 2004, 2005,
24 and 2006 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing
25 regulations set forth at 40 C.F.R. Part 372.

26 2. Complainant is the Director of the Communities and Ecosystems Division in EPA,
27 Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May
28 11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA

1 to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number
2 R1260.14B, dated May 19, 2005, the Regional Administrator re-delegated that authority to
3 Complainant.

4 B. STATUTORY AND REGULATORY BASIS

5 3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
6 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for
7 the submission of information relating to the release of toxic chemicals under EPCRA Section
8 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

9 4. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
10 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
11 the State in which the facility is located a chemical release form published under Section 313(g)
12 of EPCRA for each toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R.
13 § 372.65 that it manufactured, processed, or otherwise used if: (i) the facility has ten or more
14 full-time employees; (ii) the facility is in North American Industry Classification System Code
15 333513; and (iii) the facility manufactured, processed, or otherwise used during the calendar year
16 the listed toxic chemical in excess of the threshold quantity established under Section 313(f) of
17 EPCRA and 40 C.F.R. § 372.25.

18 5. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a
19 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for
20 facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of
21 EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for
22 activities involving a toxic chemical that occurred during a calendar year must be submitted on or
23 before July 1 of the next year.

24 C. ALLEGED VIOLATIONS

25 6. Respondent is a corporation and therefore fits within the definition of a "person," as
26 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

27 7. At all times relevant to this matter, Respondent owned and operated a facility (the
28 "Facility") in the business of manufacturing can manufacturing machinery, located at 4900

1 Pacific Boulevard in Los Angeles, California, that fits within the definition of a “facility,” as
2 provided in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3 8. At all times relevant to this matter, the Facility had 10 or more “full-time employees,”
4 as that term is defined at 40 C.F.R. § 372.3.

5 9. At all times relevant to this matter, the Facility was in North American Industry
6 Classification System Code 333513.

7 10. During the calendar year 2004, Respondent “processed,” as that term is defined in 40
8 C.F.R. § 372.3, approximately 49,022 pounds of cobalt, a toxic chemical listed under 40 C.F.R.
9 § 372.65. This quantity exceeded the 25,000 pound threshold for reporting “processing” of that
10 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
11 § 372.25.

12 11. During the calendar year 2004, Respondent “processed,” as that term is defined in 40
13 C.F.R. § 372.3, approximately 144,913 pounds of chromium, a toxic chemical listed under 40
14 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for reporting “processing”
15 of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40
16 C.F.R. § 372.25.

17 12. During the calendar year 2004, Respondent “processed,” as that term is defined in 40
18 C.F.R. § 372.3, approximately 171,370 pounds of copper, a toxic chemical listed under 40 C.F.R.
19 § 372.65. This quantity exceeded the 25,000 pound threshold for reporting “processing” of that
20 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
21 § 372.25.

22 13. During the calendar year 2004, Respondent “processed,” as that term is defined in 40
23 C.F.R. § 372.3, approximately 146,336 pounds of nickel, a toxic chemical listed under 40 C.F.R.
24 § 372.65. This quantity exceeded the 25,000 pound threshold for reporting “processing” of that
25 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
26 § 372.25.

27 14. During the calendar year 2004, Respondent “processed,” as that term is defined in 40
28 C.F.R. § 372.3, approximately 68,730 pounds of manganese, a toxic chemical listed under 40

1 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for reporting “processing”
2 of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40
3 C.F.R. § 372.25.

4 15. During the calendar year 2005, Respondent “processed,” as that term is defined in 40
5 C.F.R. § 372.3, approximately 114,331 pounds of cobalt, a toxic chemical listed under 40 C.F.R.
6 § 372.65. This quantity exceeded the 25,000 pound threshold for reporting “processing” of that
7 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
8 § 372.25.

9 16. During the calendar year 2005, Respondent “processed,” as that term is defined in 40
10 C.F.R. § 372.3, approximately 265,101 pounds of chromium, a toxic chemical listed under 40
11 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for reporting “processing”
12 of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40
13 C.F.R. § 372.25.

14 17. During the calendar year 2005, Respondent “processed,” as that term is defined in 40
15 C.F.R. § 372.3, approximately 198,335 pounds of copper, a toxic chemical listed under 40 C.F.R.
16 § 372.65. This quantity exceeded the 25,000 pound threshold for reporting “processing” of that
17 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
18 § 372.25.

19 18. During the calendar year 2005, Respondent “processed,” as that term is defined in 40
20 C.F.R. § 372.3, approximately 248,865 pounds of nickel, a toxic chemical listed under 40 C.F.R.
21 § 372.65. This quantity exceeded the 25,000 pound threshold for reporting “processing” of that
22 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
23 § 372.25.

24 19. During the calendar year 2005, Respondent “processed,” as that term is defined in 40
25 C.F.R. § 372.3, approximately 117,036 pounds of manganese, a toxic chemical listed under 40
26 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for reporting “processing”
27 of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40
28 C.F.R. § 372.25.

1 20. During the calendar year 2006, Respondent "processed," as that term is defined in 40
2 C.F.R. § 372.3, approximately 82,151 pounds of cobalt, a toxic chemical listed under 40 C.F.R.
3 § 372.65. This quantity exceeded the 25,000 pound threshold for reporting "processing" of that
4 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
5 § 372.25.

6 21. During the calendar year 2006, Respondent "processed," as that term is defined in 40
7 C.F.R. § 372.3, approximately 264,753 pounds of chromium, a toxic chemical listed under 40
8 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for reporting "processing"
9 of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40
10 C.F.R. § 372.25.

11 22. During the calendar year 2006, Respondent "processed," as that term is defined in 40
12 C.F.R. § 372.3, approximately 320,934 pounds of copper, a toxic chemical listed under 40 C.F.R.
13 § 372.65. This quantity exceeded the 25,000 pound threshold for reporting "processing" of that
14 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
15 § 372.25.

16 23. During the calendar year 2006, Respondent "processed," as that term is defined in 40
17 C.F.R. § 372.3, approximately 242,263 pounds of nickel, a toxic chemical listed under 40 C.F.R.
18 § 372.65. This quantity exceeded the 25,000 pound threshold for reporting "processing" of that
19 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
20 § 372.25.

21 24. During the calendar year 2006, Respondent "processed," as that term is defined in 40
22 C.F.R. § 372.3, approximately 138,952 pounds of manganese, a toxic chemical listed under 40
23 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for reporting "processing"
24 of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40
25 C.F.R. § 372.25.

26 25. Respondent was required to submit Form Rs for cobalt, chromium, copper, nickel,
27 and manganese to EPA and the State of California for calendar year 2004 on or before July 1,
28 2005.

1 26. Respondent was required to submit Form Rs for cobalt, chromium, copper, nickel,
2 and manganese to EPA and the State of California for calendar year 2005 on or before July 1,
3 2006.

4 27. Respondent was required to submit Form Rs for cobalt, chromium, copper, nickel,
5 and manganese to EPA and the State of California for calendar year 2006 on or before July 1,
6 2007.

7 28. Respondent failed to timely submit the Form Rs required of it to EPA and the State
8 of California for calendar years 2004, 2005, and 2006, and thus violated Section 313 of EPCRA,
9 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

10 29. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
11 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any
12 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount
13 not to exceed \$32,500 for each such violation that occurred after March 15, 2004 but on or before
14 January 12, 2009. Under the Enforcement Response Policy for Section 313 of EPCRA, dated
15 August 10, 1992, and the Civil Monetary Penalty Inflation Adjustment Rule, the 15 violations
16 cited above would merit an unadjusted, gravity-based civil penalty of THREE HUNDRED AND
17 FORTY-FOUR THOUSAND AND SEVEN HUNDRED DOLLARS (\$344,700), given the
18 nature, circumstances, and extent of the violations alleged.

19 D. RESPONDENT'S ADMISSIONS

20 30. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
21 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
22 Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO;
23 (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil
24 administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the
25 allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order
26 contained in this CAFO.

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Respondent shall accompany its payment with a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Mariela Lopez
Communities and Ecosystems Division (CED-4)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Edgar Coral
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

33. If Respondent fails to pay the assessed civil administrative penalty of TWO HUNDRED AND FORTY-ONE THOUSAND, TWO HUNDRED, AND NINETY DOLLARS

1 (\$241,290), as identified in Paragraph 31, by the deadline specified in that Paragraph, then
2 Respondent shall also pay a stipulated penalty to EPA. The amount of the stipulated penalty will
3 be ONE HUNDRED AND THREE THOUSAND, FOUR HUNDRED, AND TEN DOLLARS
4 (\$103,410), and will be immediately due and payable on the day following the deadline specified
5 in Paragraph 31, together with the initially assessed civil administrative penalty of TWO
6 HUNDRED AND FORTY-ONE THOUSAND, TWO HUNDRED, AND NINETY DOLLARS
7 (\$241,290), resulting in a total penalty due of THREE HUNDRED AND FORTY-FOUR
8 THOUSAND AND SEVEN HUNDRED DOLLARS (\$344,700). Failure to pay the civil
9 administrative penalty specified in Paragraph 31 by the deadline specified in that Paragraph may
10 also lead to any or all of the following actions:

11 (1) EPA may refer the debt to a credit reporting agency, a collection
12 agency, or to the Department of Justice for filing of a collection action in the appropriate United
13 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
14 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
15 collection proceeding.

16 (2) The U.S. Government may collect the debt by administrative offset
17 (i.e., the withholding of money payable by the United States to, or held by the United States for, a
18 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
19 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
20 C.F.R. §§ 13(C) and 13(H).

21 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
22 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
23 business with EPA or engaging in programs EPA sponsors or funds.

24 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
25 Government may assess interest, administrative handling charges, and nonpayment penalties
26 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
27 civil administrative penalty specified in Paragraph 31 by the deadline specified in that Paragraph.

28 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.

1 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
2 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
3 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
4 (30) days of the effective date of this CAFO.

5 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
6 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
7 based on either actual or average cost incurred (including both direct and indirect costs), for
8 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

9 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
10 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
11 may be assessed on all debts more than ninety (90) days delinquent.

12 F. CERTIFICATION OF COMPLIANCE

13 34. In executing this CAFO, Respondent certifies that (1) it has now fully completed and
14 submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance
15 with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder;
16 and (2) it has complied with all other EPCRA requirements at all facilities under its control.

17 G. RETENTION OF RIGHTS

18 35. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
19 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
20 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
21 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
22 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
23 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
24 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
25 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

26 36. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
27 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
28 and permits.

1 H. ATTORNEYS' FEES AND COSTS

2 37. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
3 this proceeding.

4 I. EFFECTIVE DATE

5 38. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
6 effective on the date that the Final Order contained in this CAFO, having been approved and
7 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

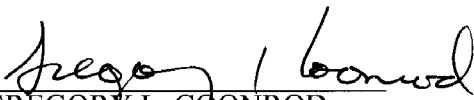
8 J. BINDING EFFECT

9 39. The undersigned representative of Complainant and the undersigned representative of
10 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
11 of this CAFO and to bind the party he or she represents to this CAFO.

12 40. The provisions of this CAFO shall apply to and be binding upon Respondent and its
13 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
14 and assigns.


15
16 FOR RESPONDENT ANGELUS SANITARY CAN MACHINERY COMPANY:

17
18 2/11/2009
19 DATE

20 
21 GREGORY L. COONROD
22 Vice President & Corporate Controller
23 Barry-Wehmler Companies, Inc. (On behalf of Angelus
24 Sanitary Can Machinery Co.)
25 8020 Forsyth Blvd.
26 St. Louis, MO 63105

27
28 FOR COMPLAINANT EPA:

29 3/26/09
30 DATE


31 
32 ENRIQUE MANZANILLA
33 Director, Communities and Ecosystems Division
34 U.S. Environmental Protection Agency, Region IX
35 75 Hawthorne Street
36 San Francisco, California 94105

II. FINAL ORDER

EPA and Angelus Sanitary Can Machinery Co. having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2009-0002) be entered, and Respondent shall pay a civil administrative penalty in the amount of TWO HUNDRED AND FORTY-ONE THOUSAND, TWO HUNDRED, AND NINETY DOLLARS (\$241,290), and comply with the terms and conditions set forth in the Consent Agreement.

03/31/09
DATE


STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. EPCRA-9-2009-0002) against Angelus Sanitary Can Machinery Co., was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Gregory L. Coonrod
Vice President & Corporate Controller
Barry-Wehmiller Companies, Inc.
8020 Forsyth Boulevard
St. Louis, Missouri 63105

Certified Mail No. 7007 3020 0000 9806 7951


Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX

Date 3-31-2009