



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA FEDERAL EXPRESS

MAR 31 2010

Mr. Carmine Dinitto
NanoChemonics Holdings, LLC
One Magnox Drive
Pulaski, VA 24301

Re: NanoChemonics Holdings, LLC, Docket No. EPCRA-03-2010-0067

Dear Mr. Dinitto:

I have enclosed the final Consent Agreement and Final Order ("CA/FO") resolving the above-referenced matter.

Please contact me at (215) 814-2483 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Donovan".

Joseph Donovan
Associate Regional Counsel
For Regulatory Enforcement

Cc: Catherine Mc Cool (3RC42)
Melissa Wright, NanoChemonics

5. 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.

6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

7. Respondent shall bear its own costs and attorney's fees.

Findings of Fact and Conclusions of Law

8. Complainant has determined that Respondent has violated EPCRA Section 313. In accordance with Sections 22.13(b), 22.18(b)(2) and (3), and 22.14(a)(2) and (3) of the Consolidated Rules of Practice, Complainant adopts the following findings of fact and conclusions of law:

- A. NanoChemonics does business in Virginia and is a Limited Liability Corporation, incorporated under the laws of the Commonwealth of Virginia. As a Virginia corporation, Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
- B. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. Section 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.
- C. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated an inorganic pigment manufacturing plant located at One Magnox Drive, Pulaski, Virginia (the "Facility").
- D. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.
- E. Section 313 of EPCRA and 40 C.F.R. Section 372 require, *inter alia*, that the owner or operator of a facility that: 1) has 10 or more employees; 2) has a primary Standard Industrial Classification ("SIC") code (as in effect on July 1, 1985) between codes 20 and 39; and 3) manufactures, processes or otherwise uses a toxic chemical listed in 40 C.F.R. Section 372.65, in excess of the threshold quantities set forth in Section 313(f) of EPCRA, 42 U.S.C. Section 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form ("Form

R”) or appropriate alternative threshold report (“Form A”) for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.

- F. At the time of the violations alleged herein, Respondent employed 10 or more full-time employees at the Facility.
- G. At the time of the violations alleged herein, the Facility had a primary SIC code of 2816. This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1985).
- H. For each toxic chemical listed in 40 C.F.R. Section 372.65 manufactured, processed, or otherwise used by Respondent at its Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA during any calendar year, Respondent has been required by EPCRA Section 313, at all times relevant to this Consent Agreement, to complete and submit to EPA and the Commonwealth of Virginia either a Form R or Form A by July 1 of the following calendar year.
- I. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA Section 313 shall be liable to the United States for a civil penalty.
- J. NanoChemonics self-disclosed violations of EPCRA Section 313 in its October 14, 2008 letter to EPA.
- K. Respondent disclosed that it failed to submit its Form Rs to the EPA and the Commonwealth of Virginia by the July 1, 2008 deadline for calendar year 2007 for Cobalt Compounds and Zinc Compounds.
- L. EPA evaluated NanoChemonics’ Self-Disclosure letter and subsequent correspondence and determined that NanoChemonics did not meet criterion one of the Self-Disclosure Policy, “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations” 65 Fed. Reg. 19618, dated April 11, 2000, (“Audit Policy”) in that the violations were not discovered by means of an audit or a through a Compliance Management System.

COUNT I - COUNT II

- M. The chemical substances Cobalt and Zinc Compounds are “toxic

chemical(s)” as defined in EPCRA Section 313(c) - (d), 42 U.S.C. § 11023(c) - (d), and 40 C.F.R. Section 372.3, and are listed in 40 C.F.R. Section 372.65.

- N. During the calendar year 2007 the amount of Cobalt and Zinc Compounds processed by Respondent exceeded the 25,000 pound threshold quantity for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.
- O. Pursuant to EPCRA Section 313, Respondent was required to submit to EPA and the Commonwealth of Virginia, by July 1, 2008 a completed Form R or Form A for Cobalt and Zinc Compounds for calendar year 2007.
- P. Respondent's failure to timely submit its Form Rs for Cobalt and Zinc Compounds for the calendar year 2007 constitutes two violations of Section 313 of EPCRA, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c).

Civil Penalty

9. To resolve EPA’s claim for civil monetary penalties for the violations cited above, Respondent consents to the assessment of a civil penalty of Two Thousand and Fourteen Dollars (\$2,014.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

10. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the particular facts and circumstances of this case and EPA’s *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992) and the Self-Disclosure Policy. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA and 40 C.F.R. Part 372.

11. Respondent shall pay the civil penalty specified in paragraph 9, above, by electronic funds transfer (“EFT”), as described below, or by sending a cashier’s check or certified check, made payable to the order of “**Treasurer, United States of America,**” to:

U.S. Environmental Protection Agency B Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Natalie Pearson, 314-418-4087

Any overnight delivery shall be sent to:

U.S. Environmental Protection Agency B Fines and Penalties, U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson, 314-418-4087

On-Line Payment Option:

WWW.PAY.GOV, Enter sfo 1.1 in the search field. Open and complete the form.

Any EFT shall be transmitted to:

Wire Transfers

Federal Reserve Bank of New York

ABA= 021030004

Account = 68010727

SWIFT Address = FRNYUS33

33 Liberty Street

New York, NY 10045

(Field tag 4200 of the wire transfer message should read:

“D68010727 Environmental Protection Agency”)

Automated Clearing House (ACH) Transfers

PNC Bank

ABA = 051036706

Environmental Protection Agency

Account 310006

CTX Format

Transaction Code 22 - checking

808 17th Street, NW

Washington, DC 20074

Contact for ACH: Jessie White, 301- 887- 6548

All payments by Respondent shall reference its name and address and the Docket Number of this action (EPCRA-03-2010-0067).

12. At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or EFT authorization form and EFT transaction record, as appropriate, to:

Catherine Mc Cool
Lead Paralegal Specialist
Team Leader for the Audit Policy
U.S. Environmental Protection Agency
Region III (Mail Code 3RC42)
1650 Arch Street
Philadelphia, PA 19103-2029
and
Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

13. Pursuant to 31 U.S.C. Section 3717 and 40 C.F.R. Section 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 or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a 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. Section 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which 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).

14. Respondent agrees not to deduct for federal taxation purposes the civil penalty paid pursuant to this CAFO.

Certifications

15. 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.

Other Applicable Laws

16. 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

17. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in this CAFO. 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 and the regulations promulgated thereunder, to enforce the provisions of this CAFO and any other federal laws or regulations for which EPA has jurisdiction, following the filing of this CAFO with the Regional Hearing Clerk.

Full and Final Satisfaction

18. Payment of the penalty specified in paragraph 9, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 325 of EPCRA for the specific violations alleged in paragraphs 8.A through 8.P, above. Compliance with this 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

19. 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

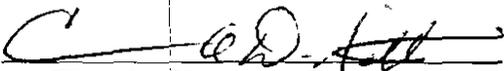
20. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules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

Entire Agreement

21. 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 Respondent:

Date: 3/10/2010

By: 
~~Timothy Hopkins~~ CARMINE DINITTO
NanoChemonics Holdings LLC

In the Matter of: NanoChemonics Holdings, LLC ,

Docket No. EPCRA-03-2010-0067

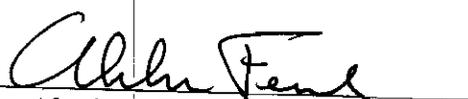
For Complainant:

Date: 3/22/10

By: 
Marcia Mulkey, Regional Counsel
Office of Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 3/26/10

By: 
Abraham Ferdas, Director
Land and Chemicals Division

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

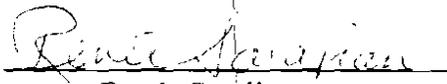
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|------------------------------------|---|--|
| In the Matter of: | : | |
| | : | |
| NanoChemonics Holdings, LLC | : | Docket No. EPCRA-03-2010-0067 |
| One Magnox Drive | : | |
| Pulaski, VA 24301 | : | |
| | : | FINAL ORDER |
| Respondent | : | |
| | : | |
| NanoChemonics Holdings, LLC | : | |
| One Magnox Drive | : | |
| Pulaski, VA 24301 | : | Proceeding under EPCRA § 325(c), 42 U.S.C. § 11045(c) |
| Facility | : | |
| | : | FINAL ORDER |

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, NanoChemonics Holdings, LLC, 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.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992), and the provisions and objectives of EPCRA, IT IS HEREBY ORDERED that Respondent pay a civil penalty of Two Thousand and Fourteen Dollars (\$2,014.00), and comply with the terms and conditions of the Consent Agreement.

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

Date: 5/30/10


Renée Sarajian
Regional Judicial Officer
U.S. EPA - Region III

In the Matter of NanoChemonics Holdings, LLC, Docket No. EPCRA-03-2010-0067

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be sent the attached Consent Agreement and Final

Order to the following parties:

Original By Hand Delivery to:

Regional Hearing Clerk, Region III,
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Copy by Hand Delivery to:

Regional Judicial Officer, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Copy by Federal Express to:

Carmine Dinitto
NanoChemonics Holdings, LLC
One Magnox Drive
Pulaski, VA 24301

Melissa Wright
NanoChemonics Holdings, LLC
One Magnox Drive
Pulaski, VA 24301

Date: 3/31/10

Catherine Mc Cool

Catherine Mc Cool
Lead Paralegal Specialist