



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

MAR 21 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joel T. Bowers
Barnes & Thornburg, LLP
600 1st Source Bank Center
South Bend, Indiana 46601-1632

Re: Smith Metal Finishing, Inc., Ft. Wayne, Indiana
Consent Agreement and Final Order – Docket No:

EPCRA-05-2008-0008
JBW

Dear Mr. Bowers:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on March 21, 2008. Please have your client pay the eight installments of \$3,592.09 each in the manner prescribed in paragraphs 38 and 39 and reference their checks with the number BD 2750864E002 and docket number EPCRA-05-2008-0008. The first payment is due on April 21, 2008, the second and subsequent payments must be made every 90 days thereafter.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Ann Coyle, Associate Regional Counsel, at (312) 886-2248. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Ann Coyle (w/enclosure)
Office of Regional Counsel
U.S. EPA Region 5

Marcy Toney (w/enclosure)
Regional Judicial Officer

Ian Ewusi-Wilson
IN SERC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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2008 MAR 21 AM 10: 51

In the Matter of:

Smith Metal Finishing, Inc.
6912 Derek Drive
Ft. Wayne, Indiana 46803

Respondent.

)
) Docket No. EPCRA-05-2008-0008
)
) Proceeding to Assess a Civil Penalty Under
) Section 325(c)(1) of the Emergency
) 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, Emergency Response Branch 2 United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Smith Metal Finishing, Inc., a corporation doing business in the State of Indiana.
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 to the terms of this 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 prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 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 make 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, MSDSs.

12. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

13. 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 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997, through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Alleged Violations

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

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 6912 Derek Drive, Fort Wayne, Indiana (facility).

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

17. 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.

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

19. Sulfuric acid is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

20. 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).

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

22. During at least one period of time in calendar year 2004, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

23. During at least one period of time in calendar year 2005, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

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

25. Respondent was required to submit to the state emergency response commission, local emergency planning committee, and fire department on or before March 1, 2005, a completed emergency and hazardous chemical inventory form including sulfuric acid for calendar year 2004.

26. Respondent was required to submit to the state emergency response commission, local emergency planning committee, and fire department on or before March 1, 2006, a completed emergency and hazardous chemical inventory form including sulfuric acid for calendar year 2005.

27. At all times relevant to this Complaint, the Indiana State Emergency Response Commission was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

28. At all times relevant to this Complaint, the Allen County Local Emergency Planning Committee was the LEPC for Allen County under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

29. At all times relevant to this Complaint, the Fort Wayne Fire Department was the fire department with jurisdiction over the facility.

30. Respondent came into compliance with the EPCRA Section 312 requirements on February 28, 2007.

31. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2005, for calendar year 2004 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

32. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2006, for calendar year 2005 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

33. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2005, for calendar year 2004 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

34. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2006, for calendar year 2005 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

35. Each day Respondent failed to submit to the Fort Wayne Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by

March 1, 2005, for calendar year 2004 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

36. Each day Respondent failed to submit to the Fort Wayne Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2006, for calendar year 2005 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

37. In consideration of the nature, circumstances, extent and gravity of the violations, and other such matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$27,548.

38. Respondent agrees to pay the United States of America a civil penalty of \$27,548 plus interest, calculated at five percent per annum, in eight equal installments of \$3,592.09. Payment of the first installment must be made within 30 days of the execution of the attached Final Order. Payment of the second and subsequent installments must be made every 90 days thereafter. Each installment must be paid by certified or cashier's check, payable to the "Treasurer, United States of America," and sent to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 9790077
St. Louis, Missouri 63197-9000

The check must note the following: the case title (In the matter of: Smith Metal Finishing), the docket number of this CAFO and the billing document number 2750864E002.

39. For payment by check, a transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ruth McNamara, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

41. 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.

42. 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 six percent per year penalty on any principal amount 90 days past due.

General Provisions

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

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

45. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

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

47. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 304 of EPCRA.

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

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

50. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

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In the Matter of: Smith Metal Finishing, Inc.

Docket No. EPCRA-05-2008-0008

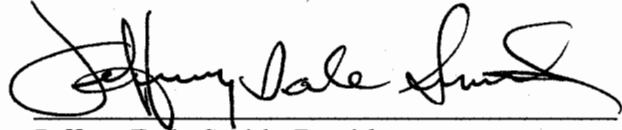
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Signatories

Smith Metal Finishing, Inc., Respondent

2-26-2008

Date

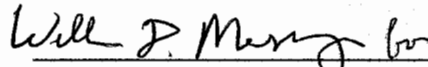


Jeffrey Dale Smith, President
Smith Metal Finishing, Inc.

U.S. Environmental Protection Agency, Complainant

3-17-08

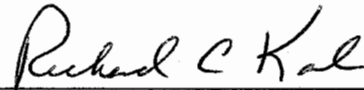
Date



Linda Nachowicz, Chief
Emergency Response Branch 2
Superfund Division


3-17-08

Date



Richard C. Karl, Director
Superfund Division

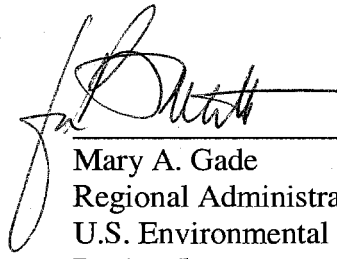
In the Matter of: Smith Metal Finishing, Inc.

Docket No. EPCRA-05-2008-0008 

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.

3-18-08
Date



Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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In the Matter of: **Smith Metal Finishing**

Docket No. EPCRA-05-2008-0008 *JBW*

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number EPCRA-05-2008-0008 *JBW* to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Smith Metal Finishing's counsel by placing it in the custody of the United States Postal Service addressed as follows:

Joel T. Bowers
Barnes & Thornburg, LLP
600 1st Source Bank Center
South Bend, IN 46601-1632

on the 21ST day of March, 2008.

Ruth McNamara

Ruth McNamara
U.S. Environmental Protection Agency
Region 5