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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:)
)
 Nupro Industries Corporation)
 2925 E. Ontario Street)
 Philadelphia, Pennsylvania)
 19134,)
 Respondent.)
)
 Nupro Industries Corporation)
 2925 E. Ontario Street)
 Philadelphia, Pennsylvania)
 19134,)
 Facility.)
)

EPA Docket Nos.: CERC-03-2011-0294
 EPCRA-03-2011-0294
 Proceedings Pursuant to Sections 103 and
 109 of the Comprehensive Environmental
 Response, Compensation, and Liability Act,
 42 U.S.C. §§ 9603, 9609, and Sections 304
 and 325 of the Emergency Planning and
 Community Right-to-Know Act, 42 U.S.C.
 §§ 11004, 11045

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Agency"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has redelegated this authority to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant"). This Consent Agreement is also proposed and entered into pursuant to the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, delegated to the Regional Administrator by EPA Delegation No. 22-3-A, and redelegated to Complainant by EPA Region III Delegation No. 22-3-A. Further, this Consent Agreement is proposed and entered into under the authority provided by 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 ("Part 22").

DP 9/26/11

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

PRELIMINARY STATEMENT

1. The implementing regulations for the emergency notification requirements in Section 304 of EPCRA, 42 U.S.C. § 11004, are codified at 40 C.F.R. Part 355. On November 3, 2008, EPA issued a final rule, 73 Fed. Reg. 65451 (Nov. 3, 2008), *inter alia*, to make these regulations easier to read by presenting them in a plain language format. The amendments resulted in a re-numbering of 40 C.F.R. Part 355, which became effective on December 3, 2008. This CA/FO references the newly effective numbering, but includes the pre-2008 numbering in parentheses since those regulations were in effect at the time of the violations alleged herein.

EPA's FINDINGS OF FACT

2. Respondent Nupro Industries Corporation ("Nupro" or "Respondent") is a Pennsylvania corporation with its principal place of business located at 2925 E. Ontario Street in Philadelphia, Pennsylvania.

3. As a corporation, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61 (355.20).

4. In October 2006, and continuing to the present time, Respondent was in charge of, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and was the owner and operator of, within the meaning of Section 304 of EPCRA, 42 U.S.C. §§ 11004, the manufacturing facility located at 2925 E. Ontario Street in Philadelphia, Pennsylvania (the "Facility").

5. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), Section 304 of EPCRA, 42 U.S.C. §§ 11004, and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61 (355.20).

6. On or about December 13, 2006, EPA conducted an inspection of the Facility to determine the Facility's compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of the EPCRA, 42 U.S.C. §§ 11002-11022.

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

UP 9/26/11

8. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a)-(c) of EPCRA, 42 U.S.C. § 11004(a)-(c), (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

9. In October 2006, and continuing to the present time, the Facility was a facility at which a hazardous substance was used or stored.

10. On October 2, 2006, and continuing into October 3, 2006, at least 1,000 pounds of sulfuric acid, Chemical Abstracts Service (“CAS”) No. 7664-93-9, was released from Tank 002A during a 24-hour period (the “Release”).

EPA’s FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 103 OF CERCLA

11. The findings of fact contained in paragraphs 1 through 10 of this CA/FO are incorporated by reference herein as though fully set forth at length.

12. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or exceeding the RQ in any 24-hour period.

13. Sulfuric acid is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 1,000 pounds, as listed in 40 C.F.R. § 302.4.

14. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance in a 24-hour period, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

15. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

16. Respondent knew or should have known of the Release of sulfuric acid from the Facility, in a quantity equal to or exceeding its RQ.

17. Respondent did not notify the NRC of the Release.

18. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding its applicable RQ in a 24-hour period, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

EPA's CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 103 OF CERCLA

19. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

EPA's FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC

20. The findings of fact and conclusions of law contained in paragraphs 1 through 19 of this CA/FO are incorporated by reference herein as though fully set forth at length.

21. Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to notify the State Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") immediately following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.

22. Sulfuric acid is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61 (40 C.F.R. § 355.20), with an RQ of 1,000 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.

23. The SERC for the Facility for the purpose of emergency release notification is, and has been at all times relevant to this CA/FO, the Pennsylvania Emergency Management Agency.

24. The Release of sulfuric acid from the Facility constitutes a release of an EHS in a quantity equal to or exceeding its RQ.

25. The Release required immediate notification of the SERC pursuant to Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

26. Respondent did not notify the SERC of the Release.

27. Respondent failed to immediately notify the SERC of the Release of sulfuric acid as soon as Respondent knew or should have known that a release of an EHS had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

EPA's CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC

28. Respondent's failure to notify the SERC immediately of the Release is a violation of Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

EPA's FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – LEPC

29. The findings of fact and conclusions of law contained in paragraphs 1 through 28 of this CA/FO are incorporated by reference herein as though fully set forth at length.

30. The LEPC for the Facility is, and has been at all times relevant to this CA/FO, the Philadelphia Local Emergency Planning Committee.

31. The Release required immediate notification of the LEPC pursuant to Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

32. Respondent did not notify the LEPC of the Release.

33. Respondent failed to immediately notify the LEPC of the Release of sulfuric acid as soon as Respondent knew or should have known that a release of an EHS had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

EPA's CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – LEPC

34. Respondent's failure to notify the LEPC immediately of the Release is a violation of Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

EPA's FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 304(c) OF EPCRA – SERC

35. The findings of fact and conclusions of law contained in paragraphs 1 through 34 of this CA/FO are incorporated by reference herein as though fully set forth at length.

36. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires, in relevant part, that when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility

must provide a written follow-up report regarding the release to the SERC and the LEPC, as soon as practicable.

37. The Release constitutes a release of an EHS in a quantity equal to or exceeding its RQ, requiring immediate notification of the SERC and LEPC pursuant to Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), and, consequently, requiring submission of written follow-up reports to the SERC and LEPC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

38. Respondent did not provide a written follow-up report to the SERC.

39. Respondent did not provide a written follow-up report regarding the Release to the SERC as soon as practicable after Respondent knew or should have known of the Release, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

EPA's CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 304(c) OF EPCRA - SERC

40. Respondent's failure to provide a written follow-up report regarding the Release to the SERC, as soon as practicable, is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

EPA's FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 304(c) OF EPCRA - LEPC

41. The findings of fact and conclusions of law contained in paragraphs 1 through 40 of this CA/FO are incorporated by reference herein as though fully set forth at length.

42. Respondent did not provide a written follow-up report to the LEPC.

43. Respondent did not provide a written follow-up report regarding the Release to the LEPC as soon as practicable after Respondent knew or should have known of the Release, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

EPA's CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 304(c) OF EPCRA - LEPC

44. Respondent's failure to provide a written follow-up report regarding the Release to the LEPC, as soon as practicable, is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

SETTLEMENT

45. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent agrees to (i) pay a penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, as alleged above, in the amount of **\$8,100.00 in principal and \$18.36 in interest** (“CERCLA civil penalty”), and for the violations of Sections 304(a)-(c) of EPCRA, 42 U.S.C. §§ 11004(a)-(c), as alleged above, in the amount of **\$32,400.00 in principal and \$108.05 in interest** (“EPCRA civil penalty”) for a total penalty of \$40,500 in principal and \$126.41 in interest and (ii) perform the Supplemental Environmental Project set forth below.

46. Respondent consents to the issuance of this CA/FO, and consents for purposes of settlement to the payment of the civil penalty plus interest cited in the foregoing paragraph and to performance of the Supplemental Environmental Project, set forth below.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

47. The following Supplemental Environmental Project (“SEP”) is consistent with applicable EPA policy and guidelines, specifically EPA’s Supplemental Environmental Projects Policy, effective May 1, 1998.

48. Respondent agrees to install and operate a rainwater harvesting and re-use system for a high pressure water washing process in the “Neatsfoot” operations in Building 10 of the Facility in accordance with the specifications set forth in the SEP proposal attached hereto as Attachment A and incorporated herein by reference (“SEP Proposal”).

- a. The SEP will reduce the use of sulfuric acid, thus lowering the risk of releases of hazardous substances to the environment as described in the SEP proposal.
- b. Respondent shall install the rainwater harvesting and re-use system within one hundred and eighty (180) calendar days of the effective date of this CA/FO and begin operation of the rainwater harvesting and re-use system in accordance with the yearly project period described in paragraph 48(d), below.
- c. Within one week after the first rain event during the operation period set forth below in subparagraph 48(d) after installation of the rainwater harvesting and re-use system, Respondent shall begin operation of the high pressure water washing process in Building 10.
- d. Respondent will operate the high pressure water washing process for a minimum of nine (9) months per year in Building 10 (“yearly project period”), during which time it is expected by the parties that the exterior pipes necessary to carry water harvested from the rainwater harvesting and re-use system will not be frozen.

- e. Upon initiation of the high pressure water washing process, Respondent will cease use of alkaline soap in the Neatsfoot operation in Building 10.

49. Respondent's total expenditure for installation of the SEP shall not be less than \$23,320.00 in accordance with the specifications set forth in the SEP Proposal. The SEP has been valued at \$19,800.00 pursuant to EPA's Project Model. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Status Report described in paragraph 53 below.

50. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulations; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

51. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

52. Respondent shall notify EPA, c/o Perry Pandya, U.S. EPA Region III, 1650 Arch Street (Mail Code 3HS61), Philadelphia, PA 19103, pandya.perry@epa.gov, when such installation is complete. EPA may grant Respondent an extension of time to fulfill its SEP obligations if EPA determines, in its sole and unreviewable discretion, that, through no fault of Respondent, Respondent is unable to complete the SEP obligations within the time frame required by paragraph 48(b). Requests for any extension must be made in writing within forty eight (48) hours of any event, such as an unanticipated delay in obtaining governmental approvals, the occurrence of which renders the Respondent unable to complete the SEP within the required time frame ("force majeure event"), and prior to the expiration of the allowed SEP installation deadline. Any such requests should be directed to Perry Pandya at the address noted above.

53. SEP Status Report

a. Respondent shall submit a SEP Status Report to EPA for the SEP, c/o Perry Pandya, U.S. EPA Region III, 1650 Arch Street (Mail Code 3HS61), Philadelphia, PA 19103, within fourteen (14) days of operating the SEP for a full calendar year, as set forth in paragraph 48(d). The SEP Status Report shall contain the following information:

- (i) detailed description of the SEP as installed;
- (ii) a description of any installation or operation problems encountered and the solution thereto;
- (iii) Respondent's certification that the SEP has been installed correctly and is operating properly;
- (iv) itemized costs;
- (v) documentation of the amount of alkaline soap (in gallons) used in Building 10 in the twelve (12) month period prior to installation of

- (vi) the rainwater harvesting and re-use system;
- (vi) confirmation that no alkaline soap was used in Building 10 during the twelve (12) month period after installation and start-up of the rainwater harvesting and re-use system;
- (vii) a calculation of the reduction in use of alkaline soap in Building 10 (in gallons) during the first year of operation of the SEP from the previous year, and a calculation of the reduction in use of sulfuric acid (in pounds) in Building 10 during the first year of operation of the SEP from the previous year, using a ratio of 5.8 pounds of sulfuric acid to one gallon of alkaline soap (as described in Attachment A); and
- (viii) a statement that the rainfall from every rain event during the yearly project period has been fully re-directed to the storage tank up to the extent of its capacity and used for floor and equipment washing in Building 10.

b. Respondent shall, by its representative officers, sign the report required by this paragraph and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

c. Respondent agrees that failure to submit the report required by this paragraph shall be deemed a violation of this CA/FO and, in such an event, Respondent will be liable for stipulated penalties pursuant to Paragraph 56 below.

d. In itemizing its costs in the SEP Status Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment was made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment was made.

54. Respondent agrees that EPA may inspect the facility at which the SEP is being implemented at reasonable times in order to confirm that the SEP is being undertaken in conformity with the requirements of this CA/FO.

DP 9/26/11

55. EPA Acceptance of SEP Status Report

a. Upon receipt of the SEP Status Report identified in paragraph 53, EPA will provide written notification to the Respondent of one of the following:

- (i) If the SEP Status Report is deficient, notify the Respondent in writing that the SEP Status Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional fifteen (15) days to correct those deficiencies;
- (ii) If the SEP Status Report demonstrates that the SEP has been completed in accordance with the CA/FO, notify the Respondent in writing that EPA has concluded that the project has been completed in accordance with this CA/FO; or
- (iii) If the SEP Status Report demonstrates that the SEP has not been completed in accordance with this CA/FO, notify the Respondent in writing that EPA has concluded that the project has not been completed in accordance with this CA/FO and seek stipulated penalties in accordance with paragraph 56 herein.

b. If EPA provides notification in accordance with item (i) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and Respondents shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Status Report. If agreement cannot be reached within this thirty (30) day period, a person who holds a management position at EPA shall provide to the Respondent a written statement of its decision on the adequacy of the installation or operation of the SEP, which shall be a final Agency action binding upon Respondent. In the event either the SEP is not completed as required by this CA/FO, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 56 herein.

56. Stipulated Penalties

a. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement relating to the performance of the SEP, described in paragraph 48, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs set forth in paragraph 49 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (iii) below, if the SEP has not been installed and operated satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to EPA in the amount of \$14,850.00.
- (ii) If the SEP is not completed in accordance with paragraph 48 but the Complainant determines that the Respondent: (a) made good faith and timely efforts to install and operate the project; and (b)

certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

- (iii) If the SEP is installed and operated in accordance with paragraph 48 but the Respondent spent less than ninety (90) percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of \$2,475.00.
- (iv) If the SEP is completed in accordance with paragraph 48 and the Respondent spent at least ninety (90) percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- (v) If Respondent fails to submit the SEP Status Report required by paragraph 53, Respondent shall pay a stipulated penalty in the amount of \$500.00 for each day after the report was originally due until the report is submitted.

b. The determination of whether the SEP has been satisfactorily installed and operated and whether the Respondent has made a good faith, timely effort to install and operate the SEP shall be in the sole discretion of EPA.

c. Respondent shall pay stipulated penalties, in accordance with paragraphs 59 and 60, not more than fifteen (15) days after receipt of written demand by EPA for such penalties, with twenty (20) percent of any stipulated penalties paid as a CERCLA civil penalty and eighty (80) percent of any stipulated penalties paid as an EPCRA civil penalty. Interest and late charges shall be paid as set forth in paragraphs 62 through 66.

PAYMENT TERMS

57. In order to avoid the assessment of additional interest, administrative costs, and late payment penalties in connection with the CERCLA civil penalty described in this CA/FO, Respondent shall pay the CERCLA civil penalty in accordance with paragraph 59 and in the time period specified below:

<u>Schedule</u>	<u>Principal Amount</u>		<u>Interest</u>		<u>Payment Amount Due</u>
1 st payment within 30 days of the effective date	\$902.04	+	\$0.00	=	\$902.04
2 nd payment within 60 days of the effective date	\$897.96	+	\$4.08	=	\$902.04

DP 9/20/11

3 rd payment within 90 days of the effective date	\$898.47	+	\$3.57	=	\$902.04
4 th payment within 120 days of the effective date	\$898.98	+	\$3.06	=	\$902.04
5 th payment within 150 days of the effective date	\$899.49	+	\$2.55	=	\$902.04
6 th payment within 180 days of the effective date	\$900.00	+	\$2.04	=	\$902.04
7 th payment within 210 days of the effective date	\$900.51	+	\$1.53	=	\$902.04
8 th payment within 240 days of the effective date	\$901.02	+	\$1.02	=	\$902.04
9 th payment within 270 days of the effective date	\$901.53	+	\$0.51	=	\$902.04
TOTAL:	\$8,100.00	+	\$18.36	=	\$8,118.36

58. In order to avoid the assessment of additional interest, administrative costs, and late payment penalties in connection with the EPCRA civil penalty described in this CA/FO, Respondent shall pay the EPCRA civil penalty in accordance with paragraph 59 and in the time period specified below:

<u>Schedule</u>	<u>Principal Amount</u>		<u>Interest</u>		<u>Payment Amount Due</u>
1 st payment within 30 days of the effective date	\$3,612.00	+	\$0.00	=	\$3,612.00
2 nd payment within 60 days of the effective date	\$3,588.01	+	\$23.99	=	\$3,612.00
3 rd payment within 90 days of the effective date	\$3,591.00	+	\$21.00	=	\$3,612.00
4 th payment within 120 days of the effective date	\$3,593.99	+	\$18.01	=	\$3,612.00
5 th payment within 150 days of the effective date	\$3,596.99	+	\$15.01	=	\$3,612.00
6 th payment within 180 days	\$3,599.99	+	\$12.01	=	\$3,612.00

DP 9/26/11

of the effective date

7th payment within 210 days of the effective date \$3,602.99 + \$9.01 = \$3,612.00

8th payment within 240 days of the effective date \$3,605.99 + \$6.01 = \$3,612.00

9th payment within 270 days of the effective date \$3,609.04 + \$3.01 = \$3,612.05

TOTAL: \$32,400.00 + \$108.05 = \$32,508.05

59. Payment of the civil penalty amount set forth in paragraph 45 and over the time periods specified in paragraphs 57 and 58 shall be made by either cashier's check, certified check, electronic wire transfer, or online via credit or debit card in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Numbers of this action, *i.e.*, CERC-03-2011-0294 and EPCRA-03-2011-0294;
- b. All checks for the CERCLA civil penalty shall be made payable to **EPA-Hazardous Substances Superfund**; all checks for the EPCRA civil penalty shall be made payable to **United States Treasury**;
- c. All payments for the CERCLA civil penalty made by check and sent by regular mail shall be addressed to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091 or Eric Volck 513-487-2105

- d. All payments for the EPCRA civil penalty made by check and sent by regular mail shall be addressed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091 or Eric Volck 513-487-2105

11/9/20

- e. All payments for the CERCLA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979076
US EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- f. All payments for the EPCRA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101

Contact: 314-418-1028

- g. 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 ML King Drive
Cincinnati, OH 45268-0001

- h. 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

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- AP 9/29
- i. 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

Contact: John Schmid 202-874-7026 or REX 1-866-234-5681

- j. All on-line payments with a debit or credit card:

<https://www.pay.gov/paygov>

Enter sfo 1.1 in the search field. Open and complete the form.

- k. Additional payment guidance is available at:

http://www.epa.gov/cfo/finservices/payment_instructions.htm

60. The Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
guy.lydia@epa.gov

and

Chris Minshall (3RC30)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
minshall.chris@epa.gov

61. The CERCLA civil penalty and EPCRA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and are consistent with 40 C.F.R. Part 19 and the *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, (September 30, 1999)*.

62. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess additional 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 by the dates specified in paragraphs 57 and 58 or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including additional interest, penalties, and/or administrative costs of handling delinquent debts.

63. Interest on any civil penalty assessed in this CA/FO begins to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. EPA does not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a). Accordingly, interest payments on each outstanding installment of the civil penalty assessed herein are set forth in paragraphs 57 and 58 of this CA/FO.

64. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 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) day period the penalty remains unpaid.

65. A penalty charge of six (6) percent per year will be assessed monthly on any portion of an installment payment which remains delinquent more than ninety (90) calendar days in accordance with 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, in accordance with 31 C.F.R. § 901.9(d).

66. Failure by the Respondent to pay the penalty assessed by the Final Order in full by the due date set forth herein may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

67. For the purpose of this proceeding, Respondent admits that EPA has jurisdiction over this matter.

68. Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or enforcement of the CA/FO.

6P 9/20/11

69. For the purpose of this proceeding, Respondent neither admits nor denies factual allegations or conclusions of law set forth in this Consent Agreement, but expressly waives its rights to contest said allegations in this proceeding. To the extent relevant in any future proceeding between Respondent and the EPA or other party, other than a proceeding by the EPA to enforce the terms of this CA/FO, Respondent does not waive any argument or defense relating to the factual or legal allegations, findings or conclusions set forth in this CA/FO.

70. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

71. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to CERCLA and EPCRA for the violations alleged by EPA in this CA/FO. The provisions of the CA/FO shall be binding upon Respondent and its successors or assigns and EPA. By his or her signature below, the person signing this Consent Agreement on behalf of the 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 the Consent Agreement and accompanying Final Order.

72. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

73. Each party to this action shall bear its own costs and attorney's fees.

Nupro Industries Corporation:

David M Potter
SIGNATURE

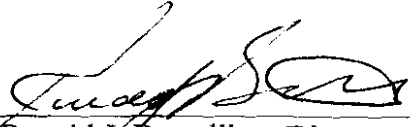
September 20, 2011
DATE

Name: David M. Potter

Title: Vice President and General Manager

9/25/11

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division


DATE

Attachment A – SEP Proposal

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2011 SEP 30 AM 11:10

REGIONAL HEARING CLERK
EPA REGION III PHILA, PA

Summary

The proposed SEP involves re-use of captured rainwater for cleaning floors and operating equipment within Building 10. Building 10 houses the production facilities for the Neatsfoot Oil Refineries (“Neatsfoot”), an operating division of Nupro Industries Corporation (“Nupro”). As described below, this change in cleaning methods will reduce the overall use of sulfuric acid and alkali soap/degreaser by Neatsfoot and will have other significant environmental benefits associated with the harvesting and re-use of rainwater such as reduced demand on local water supply and reduced demand on the local sewer system, both of which provide benefit to local water quality.

Project Description

Sulfuric acid is used in the Neatsfoot operation located at 2925 East Ontario Street in Philadelphia. Sulfuric acid is used in a process called “acidulation” to break soaps into fats that are immiscible in water. The fats are separated from the water and sold as a grease/lubrication product. As indicated above, the Neatsfoot production facilities are housed in Building 10. Presently, as part of Neatsfoot’s operating process, the floors and operating equipment in Building 10 are washed down regularly with soap and potable water in order to collect remaining amounts of fats/grease and direct them back into the production processes. Neatsfoot conducts the washing operation with an alkaline soap that contains five percent caustic soda, which makes the soap very effective in removing/collecting grease since the caustic chemically converts grease to soap. The soap and water are thereafter collected and routed back to the Neatsfoot acidulation process where the pH is adjusted, using sulfuric acid, to convert the soaps back to free fats needed to make Neatsfoot products.

This SEP will involve the construction of necessary facilities and equipment to harvest and re-use rainwater for a high pressure water washing process in lieu of the current alkaline soap/potable water washing operation. Under the SEP, Neatsfoot will eliminate the use of alkaline soap in this operation, reduce its use of potable water, and reduce its storm water discharges. By eliminating the use of alkaline soap in this washing process, it will reduce the quantity of sulfuric acid required in the acidulation process to reach the optimal pH for grease production. In addition, the re-use of rainwater will reduce potable water demands of this process and will reduce storm water discharges.

Environmental Benefits

As indicated above, this SEP will reduce sulfuric acid use by Neatsfoot, which was the hazardous substance at issue in the October 2006 incident. In addition, the SEP has other significant environmental benefits. The harvesting and re-use of rainwater will reduce the facility’s demand for potable water and will reduce its loading on the Philadelphia sewer system. These effects will reduce water treatment needs associated with ensuring the quality of potable water supply and water treatment needs associated with discharges to the local publicly owned

treatment works ("POTW"). Similarly, it may help to lower the risk of POTW combined sewer overflow associated with storm events.

The proposed rainwater harvesting system will collect rainwater over an area of approximately 11,600 square feet. A currently decommissioned 43,000 gallon tank will be refurbished and placed into use to store the harvested rainwater. This size tank (43,000 gallons) should be sufficient to hold the rainfall from a 6-inch rain event over the collection area.

The use of rainwater will displace the potable water that is presently used for floor and equipment wash-down in Building 10. If the rainwater is determined to be clean enough, it may also be used in the preliminary washing of the raw poultry oil before the oil winterization process in Building 10. Both uses will displace the use of potable water which will, in turn, reduce the use of chlorine for treatment at the local water treatment plant and at the local POTW. Reduced chlorine use will also reduce the amount of chlorinated organics that are generated in the treatment of potable water and in the disinfection of wastewater.

The displacement of potable water at the Neatsfoot operations will also reduce the average hydraulic flow and the peak hydraulic flow at the local POTW. The reduced hydraulic loads will reduce the total amount of BOD5 and total suspended solids (TSS) discharged by the POTW. These reductions will have a positive effect on water quality in the Delaware River.

Project Basis of Design

A new rainwater management sump is being installed in the alley outside of Building 10 to collect rainwater and pump it to the Philadelphia sewer system. The proposed SEP will redirect the rainwater away from the sewer system and to the 43,000 gallon tank described above to capture and store the rainwater. A new pump and distribution piping will be added to allow routine high pressure washing of operating facilities at Building 10.

Estimated Capital Costs

The following Capital Estimate covers the re-direction of the rainwater to the existing 43,000 gallon tank and a high-pressure manual wash-down system for Building 10 operations. Neatsfoot currently estimates that actual construction of these capital improvements can be completed in a period of 3 calendar months.

Item	Qty	Units	Unit Cost	Total Cost
3-inch carbon steel pipe, sch 40, to 43,000 gallon tank (installed of existing pipe rack)	30	ft	\$150	\$4,500
3-inch gate valve	2	ea	\$300	\$600
1-inch ball valve	1	ea	\$150	\$150
Re-furbish 43,000 gallon tank (inspect and repair)	1	lot	\$4,000	\$4,000

Item	Qty	Units	Unit Cost	Total Cost
1-1/2 inch carbon steel line, sch 40, high pressure water distribution (installed)	130	ft	\$50	\$6,500
1-1/2 inch ball valves, brass with SS trim (for high pressure distribution line)	4	ea	\$125	\$500
1.5 x 1 inch pump, CS, 50 gpm @ 180 ft diff pressure	1	ea	\$2,300	\$2,300
Electrical and Instrumentation for pump	1	lot	\$2,500	\$2,500
Pressure gauges, 0 - 100 psig	2	ea	\$75	\$150
Sub-total				\$21,200
Contingency at 10%				\$2,120
Total Estimate Cost				\$23,320

Estimated Annual Operating Costs and Savings

Item	Qty	Units	Unit Cost	Total Cost
Electricity	350	KWH	\$0.105	\$37
Labor	125	hr	\$19	\$2,375
Maintenance (3% of capital cost)	1	lot	\$900	\$900
Sub-total Operating Costs				\$3,312
Sulfuric Acid	-3,000	lbs.	\$1.40	-\$4,200
Alkali Soap/degreaser	-520	gals.	\$4.11	-\$2,137
City Water	-225,000	gals.	\$0.0011	-\$248
Sub-total Operating Savings				-\$6,585
Estimated Net Annual Operating Costs				-\$3,273

The above estimated annual operating costs and savings were developed as follows:

- The rainwater re-use system will operate a minimum of nine months per year. During the winter season, the system will be operated when weather allows. Specifically, the wash down system will be used when it is possible to wash down without using steam to heat the water in the storage tank (to prevent freezing).
- The amount of rainwater collected is based on 42 inches average annual rainfall at the Philadelphia airport, with a collection area of 11,600 sf. This converts into 300,000 gallons per year, or an effective 225,000 gallons per year once the operation is scaled to nine operating months per year.

- Electricity is based on operating a 3 HP motor for 150 hours per year.
- Labor is based on 3 hours per week, to use the system, over 39 weeks per year. An additional eight hours per year are provided for winterization and troubleshooting.
- Sulfuric acid savings is estimated at ten percent of the 40,000 lbs used in 2010. When scaled to a nine month operating year, the estimated reduction in sulfuric acid usage is 3,000 lbs per year.
- Alkali soap/degreaser savings is estimated at thirty percent of the 2,300 gallons used in 2010. This converts to a reduction of 520 gallons in alkali soap usage over a nine month operating period.
- Unit rates are based on 2010 or 2011 invoices at Nupro Industries.

Measurement of SEP Effectiveness

In practice, direct measurement of the sulfuric acid reduction attributable to the SEP is not feasible for the plant operations due to several factors, principally the fact that the SEP targets and eliminates only one of multiple uses of sulfuric acid in Neatsfoot's operating process. Specifically, variability in raw poultry oils may increase or decrease the amount of washing required to maintain finished product quality, which in turn would affect sulfuric acid use separate and apart from the use eliminated by the SEP. In addition, changes in the distribution of finished products based on Neatsfoot's customers' specific demands may require more or less caustic washing of the raw poultry as opposed to simple water washing, which would also affect sulfuric acid use separate and apart from the use eliminated by the SEP. Finally, one of the major suppliers of poultry is closing down their operations in the area in connection with such supplier's pending bankruptcy proceedings. They will be replaced by another poultry processor that has not been a major supplier of poultry oil in the region. Changes in how the new supplier handles poultry oil will affect how Neatsfoot must process such poultry oil, adding additional variability to overall sulfuric acid use separate and apart from that which is addressed by the SEP. In sum, one or all of these "other factors" can overwhelm the reductions in sulfuric acid usage estimated for this SEP. Consequently, direct measurement of overall annual sulfuric acid use will likely not provide a true measure of the success of this project.

An alternative method to measure the effectiveness of the SEP, is to measure the annual use of alkali soap for the floor and equipment wash processes in Building 10. As presented above, Nupro estimates a reduction of 520 gallons of alkali soap will effect a reduction of 3,000 lbs. sulfuric acid use. This equates to a ratio of 5.8 lbs. of sulfuric acid used per gallon of alkali soap used (Reduction Ratio). Going forward, Neatsfoot will track its alkali soap usage with respect to Building 10 floor and equipment process washes, compare such usage against the baseline 2010 usage to calculate the applicable annual reduction in alkali soap for such year attributable to the SEP, and will use the Reduction Ratio to calculate the amount of the sulfuric acid reduction for such year. Since this SEP is based on substituting high-pressure rainwater washing in place of hand-scrubbing using alkali soap, tracking the reduction in alkali soap usage

is the most accurate method to assess the environmental benefits of this project as evidenced by a reduction in sulfuric acid used in the Neatsfoot process.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III
1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

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REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

In the Matter of:)
)
Nupro Industries Corporation)
2925 E. Ontario Street)
Philadelphia, Pennsylvania)
19134,)
Respondent.)
)
Nupro Industries Corporation)
2925 E. Ontario Street)
Philadelphia, Pennsylvania)
19134,)
Facility.)
)

EPA Docket Nos.: CERC-03-2011-0294
EPCRA-03-2011-0294

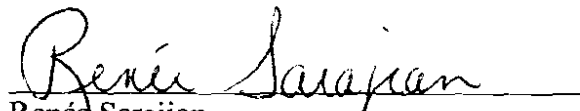
Proceedings Pursuant to Sections 103 and
109 of the Comprehensive Environmental
Response, Compensation, and Liability Act,
42 U.S.C. §§ 9603, 9609, and Sections 304
and 325 of the Emergency Planning and
Community Right-to-Know Act, 42 U.S.C.
§§ 11004, 11045

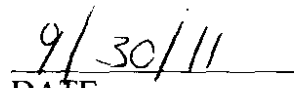
FINAL ORDER

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.


Renée Sarajian
Regional Judicial Officer
EPA, Region III


DATE

In the Matter of Nupro Industries Corporation

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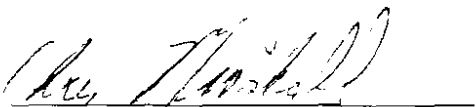
Docket No. CERC/EPCRA-03-2011-0294

2011 SEP 30 AM 11:10

CERTIFICATE OF SERVICE REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

I hereby certify that on this 30th day of September 2011, I sent a copy of the foregoing CONSENT AGREEMENT and FINAL ORDER by U.S. Mail, to the following persons:

Brenda H. Gotanda
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004



Chris Minshall
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III