



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB - 7 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dana Schurr, CEO
Minco Products, Inc.
7300 Commerce Lane
Fridley, Minnesota 55432

Re: Minco Products Inc., Fridley, Minnesota
Consent Agreement and Final Order – Docket No: **EPCRA-05-2011-0009**

Dear Mr. Schurr:

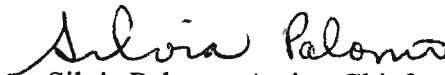
Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on February 7, 2011.

Please pay the EPCRA civil penalty in the amount of \$25,104 in the manner prescribed in paragraphs 77 and 78, and reference their check with the number BD 2751144E008 and docket number EPCRA-05-2011-0009.

The payment is due on March 9, 2011

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 Kasey Barton, Assistant Regional Counsel, at (312) 886-7163. Thank you for your assistance in resolving this matter.

Sincerely,


Silvia Palomo, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. EPCRA-05-2011-0009
)
Minco Products, Inc.) Proceeding to Assess a Civil Penalty
Fridley, Minnesota) Under Section 325(c)(1) of the Emergency
Planning and Community Right-to-Know Act of
1986, 42 U.S.C. § 11045(c)(1).
Respondent)

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Consent Agreement and Final Order
Preliminary Statement

REGIONAL HEARING CLERK
USEPA
REGION 5

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 Director, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Minco Products, Inc., a corporation doing business in the State of Minnesota.
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, 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 makes 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 chemicals.

13. Under EPCRA § 311(e) and 29 C.F.R. 1910.00(c), the term “hazardous chemical” means any chemical which is a physical hazard or a health hazard.

14. 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 \$32,500 per day of violation for violations that occurred after March 15, 2004 though January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations

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

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 7300 Commerce Lane, Fridley, Minnesota (facility).

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

18. 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.

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

20. Chlorine gas, hydrogen chloride, nitric acid, and sulfuric acid are listed as toxic and hazardous substances under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

21. Hydrochloric acid and hydrogen chloride have the same Chemical Abstracts Service registry number (CAS) of 7647-01-0.

22. Hydrochloric acid is a solution of hydrogen chloride in water.

23. Chlorine gas CAS# 7782-50-5 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

24. Chlorine gas CAS# 7782-50-5 has a minimum threshold level of 100 pounds as provided in 40 C.F.R. Part 370.

25. During at least one period of time in calendar year 2007 chlorine gas was present at the facility in an amount equal to or greater than the minimum threshold level.

26. During at least one period of time in calendar year 2008 chlorine gas was present at the facility in an amount equal to or greater than the minimum threshold level.

27. Nitric acid CAS# 7697-37-2 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

28. Nitric acid CAS# 7697-37-2 has a minimum threshold level of 500 pounds as provided in 40 C.F.R. Part 370.

29. During at least one period of time in calendar year 2007 nitric acid was present at the facility in an amount equal to or greater than the minimum threshold level.
30. During at least one period of time in calendar year 2008 nitric acid was present at the facility in an amount equal to or greater than the minimum threshold level.
31. 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).
32. Sulfuric acid CAS# 7664-93-9 has a minimum threshold level of 500 pounds as provided in 40 C.F.R. Part 370.
33. During at least one period of time in calendar year 2007 sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.
34. During at least one period of time in calendar year 2008 sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.
35. Hydrochloric acid CAS# 7647-01-0 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
36. Hydrochloric acid CAS# 7647-01-0 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.
37. During at least one period of time in calendar year 2007 hydrochloric acid was present at the facility in an amount equal to or greater than the minimum threshold.
38. During at least one period of time in calendar year 2008 hydrochloric acid was present at the facility in an amount equal to or greater than the minimum threshold level.
39. Caustic soda CAS# 1310-73-2 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

40. Caustic soda CAS# 1310-73-2 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

41. Caustic soda may cause skin irritation and chemical burns; eye damage and blindness; and pulmonary edema, nausea and vomiting and is therefore a hazardous chemical as defined in OSHA 29 C.F.R. § 1910.1200(c).

42. During at least one period of time in calendar year 2007 caustic soda was present at the facility in an amount equal to or greater than the minimum threshold level.

43. During at least one period of time in calendar year 2008 caustic soda was present at the facility in an amount equal to or greater than the minimum threshold level.

44. Cupric chloride solution CAS# 7447-39-4 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

45. Cupric chloride solution CAS# 7447-39-4 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

46. Cupric chloride solution may cause skin, eye and respiratory tract irritation and is therefore a hazardous chemical as defined in OSHA 29 C.F.R. § 1910.1200(c).

47. During at least one period of time in calendar year 2007 cupric chloride solution was present at the facility in an amount equal to or greater than the minimum threshold level.

48. During at least one period of time in calendar year 2008 cupric chloride solution was present at the facility in an amount equal to or greater than the minimum threshold level.

49. Ferric chloride solution CAS# 7705-08-0 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

50. Ferric chloride solution CAS# 7705-08-0 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

51. Ferric chloride solution may cause redness, pain, and severe burns to the skin; blurred vision, redness, pain and severe tissue burns in the eye; respiratory tract irritation including coughing, wheezing, laryngitis, shortness of breath; headache; and nausea and vomiting and is therefore a hazardous chemical as defined in OSHA 29 C.F.R. § 1910.1200(c).

52. During at least one period of time in calendar year 2007 ferric chloride solution was present at the facility in an amount equal to or greater than the minimum threshold level.

53. During at least one period of time in calendar year 2008 ferric chloride solution was present at the facility in an amount equal to or greater than the minimum threshold level.

54. Liquid nitrogen CAS#7727-37-9 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

55. Liquid nitrogen CAS#7727-37-9 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

56. Liquid nitrogen is a gas under pressure that may cause rapid suffocation when concentrations are sufficient to reduce oxygen levels below 19.5%, and may cause frostbite when it comes in contact with skin and is therefore a hazardous chemical as defined in OSHA 29 C.F.R. § 1910.1200(c).

57. During at least one period of time in calendar year 2007 liquid nitrogen was present at the facility in an amount equal to or greater than the minimum threshold level.

58. During at least one period of time in calendar year 2008 liquid nitrogen was present at the facility in an amount equal to or greater than the minimum threshold level.

59. OSHA requires Respondent to prepare, or have available, an MSDS for chlorine gas, hydrochloric acid solution, nitric acid, sulfuric acid, caustic soda, cupric chloride solution, ferric chloride solution and liquid nitrogen.

60. Section 312 of EPCRA required Respondent to submit to the SERC and fire department with jurisdiction over the facility a completed emergency and hazardous chemical inventory form including chlorine gas, hydrochloric acid solution, nitric acid, sulfuric acid, caustic soda, cupric chloride solution, ferric chloride solution and liquid nitrogen on or before March 1, 2008, for calendar year 2007.

61. Section 312 of EPCRA required Respondent to submit to the SERC and fire department with jurisdiction over the facility a completed emergency and hazardous chemical inventory form including chlorine gas, hydrochloric acid solution, nitric acid, sulfuric acid, caustic soda, cupric chloride solution, ferric chloride solution and liquid nitrogen on or before March 1, 2009, for calendar year 2008.

62. At all times relevant to this Complaint, the Division of Homeland Security and Emergency Management (DHSEM) was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

63. At all times relevant to this Complaint, the Fridley Fire Department was the fire department with jurisdiction over the facility.

Count 1

64. Complainant incorporates paragraphs 1 through 63 of this CAFO as if set forth in this paragraph.

65. Respondent submitted to the DHSEM and the Fridley Fire Department an Emergency and Hazardous Chemical Inventory Form including chlorine gas, hydrochloric acid solution, nitric acid, sulfuric acid, caustic soda, cupric chloride solution, and ferric chloride solution on March 16, 2009 for calendar year 2007.

66. Respondent submitted to the DHSEM and the Fridley Fire Department a revised Emergency and Hazardous Chemical Inventory Form correcting the quantities of chlorine, nitric acid, and sulfuric acid, and including the presence and quantity of liquid nitrogen at its facility on March 19, 2009 for calendar year 2007.

67. Each day Respondent failed to submit to the DHSEM and the Fridley Fire Department a completed Emergency and Hazardous Chemical Inventory Form including chlorine gas, hydrochloric acid solution, nitric acid, sulfuric acid, caustic soda, cupric chloride solution, ferric chloride solution and liquid nitrogen by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2

68. Complainant incorporates paragraphs 1 through 63 of this CAFO as if set forth in this paragraph.

69. Respondent submitted to the DHSEM an Emergency and Hazardous Chemical Inventory Form including chlorine gas, hydrochloric acid solution, nitric acid, sulfuric acid, caustic soda, cupric chloride solution, and ferric chloride solution on March 16, 2009 for calendar year 2008.

70. Respondent submitted to the DHSEM a revised Emergency and Hazardous Chemical Inventory Form correcting the quantities of chlorine, nitric acid, and sulfuric acid, and including the presence and quantity of liquid nitrogen at its facility on March 19, 2009 for calendar year 2008.

71. Each day Respondent failed to submit to the DHSEM a completed Emergency and Hazardous Chemical Inventory Form including chlorine gas, hydrochloric acid solution, nitric acid, sulfuric acid, caustic soda, cupric chloride solution, ferric chloride solution and liquid

nitrogen by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3

72. Complainant incorporates paragraphs 1 through 63 of this CAFO as if set forth in this paragraph.

73. Respondent submitted to the Fridley Fire Department an Emergency and Hazardous Chemical Inventory Form including chlorine gas, hydrochloric acid solution, nitric acid, sulfuric acid, caustic soda, cupric chloride solution, and ferric chloride solution on March 16, 2009 for calendar year 2008.

74. Respondent submitted a revised Emergency and Hazardous Chemical Inventory Form to the Fridley Fire Department correcting quantities of chlorine, nitric acid, and sulfuric acid, and including the presence and quantity of liquid nitrogen at its facility on March 19, 2009 for calendar year 2008.

75. Each day Respondent failed to submit to the Fridley Fire Department a completed Emergency and Hazardous Chemical Inventory Form including chlorine gas, hydrochloric acid solution, nitric acid, sulfuric acid, caustic soda, cupric chloride solution, ferric chloride solution and liquid nitrogen by March 1, 2009 for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

76. In consideration of Respondent's cooperation and agreement to quickly settle this matter, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$25,104.

77. Within 30 days after the effective date of this CAFO, Respondent must pay a \$25,104 civil penalty for the above listed EPCRA violations using one of the methods listed below:

A. If paying by check:

Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

i. For checks sent by regular U.S. postal service:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

ii. For checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the Matter of Minco Products Inc., the docket number of this CAFO and the billing document number 2751144E008.

B. If paying by an electronic funds transfer:

Respondent must pay by electronic funds transfer, payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: In the Matter of Minco Products Inc., the docket number of this CAFO and the billing document number 2751144E008

C. If paying by online payments using debit or credit card:

Respondent must pay online using ACH debit or credit card. For payments online using ACH debit or credit card please visit www.pay.gov. Using the Search Public Forms option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested.

78. If paying 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-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

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

80. 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.

81. 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 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

83. 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.

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

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

86. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 312 of EPCRA.

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

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

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

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

In the Matter of:
Minco Products, Fridley, Minnesota
Docket No.

Minco Products, Inc., Respondent

17 January 2011
Date

Dana Schurr
Dana Schurr, ~~President~~ CEO
Minco Products, Inc.

U.S. Environmental Protection Agency, Complainant

2/1/2011
Date


Richard C. Karl
Richard C. Karl, Director
Superfund Division

In the Matter of:
Minco Products, Fridley, Minnesota
Docket No. EPCRA-05-2011-0009

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.

2-3-2011
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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USEPA
REGION 5

In the Matter of:
Minco Products, Fridley, Minnesota
Docket No. EPCRA-05-2011-0009

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number **EPCRA-05-2011-0009** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Dana Schurr
CEO
Minco Products, Inc.
7300 Commerce Lane
Fridley, Minnesota 55432

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FEB - 7 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

on the 7th day of February, 2011.

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5