

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: ) DOCKET NO. EPCRA-10-2020-0091  
)  
APEX ANODIZING, INC. ) **CONSENT AGREEMENT**  
)  
Portland, Oregon, )  
)  
Respondent. )  
)

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045.

1.2. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Apex Anodizing, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

**II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 325 of EPCRA,

42 U.S.C. § 11045, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of EPCRA together with the specific provisions of EPCRA and the implementing regulations that Respondent is alleged to have violated.

### **III. ALLEGATIONS**

#### **A. STATUTORY BACKGROUND**

3.1. Under Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.22 and 372.30, the owner or operator of a covered facility must submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (“Form R”) for each toxic chemical referenced in Section 313(c) of EPCRA and listed in 40 C.F.R. § 372.65 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical threshold specified in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

3.2. Under 40 C.F.R. § 372.22, a facility that meets each of the following criteria in a calendar year is a covered facility for that calendar year and must report under 40 C.F.R. § 372.30 by July 1 of the following year:

- a. The facility has 10 or more full-time employees;
- b. The facility is in a Standard Industrial Classification (“SIC”) major group or industry code or North American Industrial Classification System (“NAICS”) code listed in 40 C.F.R. §§ 372.22(b) and 372.23; and

c. The facility manufactured, imported, processed, or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 C.F.R. §§ 372.25, 372.27, or 372.28.

3.3. 40 C.F.R. § 372.3 defines the term “otherwise use” as any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms “manufacture” or “process.” Otherwise use of a toxic chemical does not include certain exceptions that are not present here.

a. “Manufacture” is defined in 40 C.F.R. § 372.3 as to produce, prepare, import, or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use, or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical or mixture of chemicals as an impurity.

b. “Process” is defined in 40 C.F.R. § 372.3 as the preparation of a toxic chemical, after its manufacture, for distribution in commerce.

3.4. The toxic chemicals which are subject to the reporting requirement of 40 C.F.R. § 372.30 are listed in 40 C.F.R. § 372.65.

3.5. Nitric Acid is a chemical category listed in 40 C.F.R. § 372.65. The threshold quantity for Nitric Acid reporting is 10,000 pounds otherwise used for each year, as set forth in 40 C.F.R. § 372.25.

## B. VIOLATIONS

3.6. Respondent is the owner and operator of a facility located at 7015 NE Columbia Boulevard, Portland, Oregon 97218, and, in 2014, was the owner and operator of a facility located at 7116 South East 92nd Avenue, Portland, Oregon 97266 (“the facility.”)

3.7. During calendar years 2014, 2015, 2016, 2017, and 2018 the facility had 10 or more full-time employees.

3.8. The facility is included in NAICS code 332813, which is included in the list of covered industry codes in 40 C.F.R. § 372.23.

### Count 1: Failure to Submit Form R for calendar year 2014

3.9. Respondent otherwise used Nitric Acid in excess of the threshold quantity during calendar year 2014.

3.10. Respondent did not submit a Form R with EPA for nitric acid by July 1, 2015, for calendar year 2014, in accordance with the requirements of 40 C.F.R. § 372.30.

### Count 2: Failure to Submit Form R for calendar year 2015

3.11. Respondent otherwise used Nitric Acid in excess of the threshold quantity during calendar year 2015.

3.12. Respondent did not submit Form R with EPA for nitric acid by July 1, 2016, for calendar year 2015, in accordance with the requirements of 40 C.F.R. § 372.30.

### Count 3: Failure to Submit Form R for calendar year 2016

3.13. Respondent otherwise used Nitric Acid in excess of the threshold quantity during calendar year 2016.

3.14. Respondent failed to submit Form R with EPA for nitric acid by July 1, 2017, for calendar year 2016, in accordance with the requirements of 40 C.F.R. §372.30.

Count 4: Failure to Submit Form R for calendar year 2017

3.15. Respondent otherwise used Nitric Acid in excess of the threshold quantity during calendar year 2017.

3.16. Respondent failed to submit Form R with EPA for nitric acid by July 1, 2018, for calendar year 2017, in accordance with the requirements of 40 C.F.R. § 372.30.

Count 5: Delinquent submittal of Form R for calendar year 2018

3.17. Respondent otherwise used Nitric Acid in excess of the threshold quantity during calendar year 2018.

3.18. Respondent failed to submit a Form R with EPA for nitric acid by July 1, 2019, for calendar year 2018, in accordance with the requirements of 40 C.F.R. § 372.30. Respondent submitted the Form R on March 10, 2020 and was therefore 253 days late in submitting the Form R for calendar year 2018.

**C. ENFORCEMENT AUTHORITY**

3.19. Therefore, Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

3.20. Under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 for each violation that occurred after December 6, 2013 through November 2, 2015 and \$58,328 for each violation that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020. In accordance with Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day a violation of Section 313 of EPCRA, 42 U.S.C. § 11023 continues constitutes a separate violation.

**IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$18,090 (the “Assessed Penalty”).

4.4. Pursuant to 31 U.S.C. § 3717(a)(1) and 40 C.F.R. § 13.11(a)(1), Respondent must pay an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury on any portion of the penalty agreed to in Paragraph 4.3 not paid within 30 days of the effective date of this Consent Agreement and Final Order.

4.5. The rate of the current value of funds to the United States Treasury is 2%. Pursuant to 40 C.F.R. § 13.11(a)(3), the rate of interest, as initially assessed, remains fixed for the duration of indebtedness.

4.6. Respondent agrees to pay the Assessed Penalty set forth in Paragraph 4.3 in four installments. The first installment of \$4,522.50 must be paid within 30 days of the effective date of this Consent Agreement and Final Order. The second installment of \$4,590.34 (consisting of \$4,522.50 plus \$67.84 in accrued interest) must be paid within 120 days of the effective date of this Consent Agreement and Final Order. The third installment of \$4,567.72 (consisting of \$4,522.50 plus \$45.22 in accrued interest) must be paid within 210 days of the effective date of this Consent Agreement and Final Order. The fourth installment of \$4,545.11 (consisting of

\$4,522.50 plus \$22.61 in accrued interest) must be paid within 300 days of the effective date of this Consent Agreement and Final Order.

4.7. At any time, the Respondent may pay off the remaining balance owed on the Assessed Penalty earlier than set forth in paragraph 4.6. To do so, the Respondent must pay the remaining balance owed plus 2% annual interest.

4.8. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.9. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
R10\_RHC@epa.gov

Elizabeth Walters  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
walters.elizabeth@epa.gov

4.10. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become

immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.11. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.12. The Assessed Penalty, including any additional costs incurred under Paragraph 411, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.13. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.14. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III and is currently in compliance with all applicable EPCRA requirements at each of the facilities under its control.

4.15. Except as described in Paragraph 4.11, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.16. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.17. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

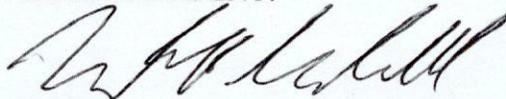
4.18. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.19. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

5/14/2020

FOR RESPONDENT:



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MATTHEW ROBERTS, President  
Apex Anodizing, Inc.

DATED:

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FOR COMPLAINANT:

LAURIS DAVIES

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DAVIES  
Date: 2020.05.19 14:05:23  
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LAURIS DAVIES, Acting Director  
Enforcement & Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. EPCRA-10-2020-0091
	)	
APEX ANODIZING, INC.	)	<b>FINAL ORDER</b>
	)	
Portland, Oregon,	)	
	)	
Respondent.	)	
	)	

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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under EPCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of EPCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
RICHARD MEDNICK  
Regional Judicial Officer EPA  
Region 10