



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

July 22, 2008

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6334

Nilesh Patel  
Durga, Inc  
2250 East Aurora Road  
Twinsburg, Ohio 44087

Consent Agreement and Final Order, Docket No. **EPCRA-05-2008-0018**

Dear Mr. Patel:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on July 22, 2008, with the Regional Hearing Clerk.

The civil penalty in the amount of \$9,027 is to be paid in the manner described in paragraphs 32 and 33. In the comment or description field of the electronic funds transfer, please state: Durga, Inc., the docket number of this CAFO (above), and the following billing document number BD 2750844E015. Payment is due by August 21, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Robert Allen  
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. EPCRA-05-2008-0018</b>
	)	
Durga Inc., DBA Ohio Circuits	)	<b>Proceeding to Assess a Civil Penalty Under</b>
Twinsburg, Ohio	)	<b>Section 325(c)(1) of the Emergency Planning</b>
	)	<b>and Community Right-to-Know Act of</b>
<b>Respondent.</b>	)	<b>1986, 42 U.S.C. § 11045(c)(1).</b>
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**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice) as codified at 40 C.F.R. Part 22.
2. The Complainant is the director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent, Durga Inc., DBA Ohio Circuits, is a corporation doing business in the State of Ohio.
4. When the parties agree to settle one or more causes of action before the filing of a complaint, such an administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). See 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 general or specific allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), and any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

**Statutory Background**

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. §§ 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount in excess of an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. §§ 372.25, 372.27 or 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) or a toxic chemical release inventory certification statement (Form A) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years including and subsequent to 1989.

12. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28, the reporting threshold amount for lead (CASRN 7439-92-1) manufactured, processed, or otherwise used at a facility is 100 pounds for calendar years including and subsequent to 2001.

13. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. The U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 of EPCRA that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

14. Respondent is a "person" as defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2250 East Aurora Road in Twinsburg, Ohio (the Facility).

16. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the Facility.

17. Respondent's Facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

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

19. The Facility has a SIC code of "3672," a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

20. On September 28, 2005, a representative of the U.S. EPA inspected Respondent's Facility.

### **Count 1**

21. During calendar year 2004, Respondent's Facility "processed," as that term is defined at 40 C.F.R. § 372.3, approximately 651 pounds of lead (CASRN 7439-92-1, see 40 C.F.R. § 372.65), in the form of an alloy with tin for use as solder, which is not an alloy of lead in stainless steel, brass or bronze, which is greater than 100 pounds, the threshold for reporting as set forth at section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and at 40 C.F.R. § 372.28.

22. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Ohio a Form R for lead for calendar year 2004, on or before July 1, 2005.

23. Respondent did not submit to the Administrator of U.S. EPA or the State of Ohio a Form R for lead for calendar year 2004, on or before July 1, 2005.

24. Respondent submitted Form R for lead to the Administrator of U.S. EPA and to the State of Ohio on January 4, 2007, for calendar year 2004.

25. Respondent's failure to submit timely a Form R for lead to the Administrator of U.S. EPA and to the State of Ohio for calendar year 2004 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

**Count 2**

26. During calendar year 2004, Respondent's Facility "manufactured," as defined by 40 C.F.R. § 372.3, approximately 28,119 of copper compounds (a chemical category listed at 40 C.F.R. § 372.65(c)), which is greater than 25,000 pounds, the threshold for reporting, as set forth at section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and at 40 C.F.R. § 372.25.

27. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Ohio Form A or Form R for copper compounds for calendar year 2004, on or before July 1, 2005.

28. Respondent did not submit to the Administrator of U.S. EPA or the State of Ohio Form A or Form R for copper compounds for calendar year 2004, on or before July 1, 2005.

29. Respondent submitted Form R for copper compounds to the Administrator of U.S. EPA and to the State of Ohio on March 30, 2007, for calendar year 2004.

30. Respondent's failure to submit timely Form R for copper compounds to the Administrator of U.S. EPA and to the State of Ohio for calendar year 2004 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

**Civil Penalty**

31. The U.S. EPA and Respondent held several conference calls to discuss and resolve this matter. The parties also discussed whether Respondent might be able to perform a supplemental environmental project (SEP) to mitigate any proposed penalty. However, the parties were unable to identify a SEP that would conform to the Agency's SEP policy.

32. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$9,027. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations; and with

respect to the Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation, and any other matters that justice may require. Complainant also considered U.S. EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended)* (April 12, 2001).

33. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,027 civil penalty for the alleged EPCRA violations.

34. Respondent agrees to make its payment in one of the following ways:

(a) For a check sent by U.S. Postal Service mail, Respondent shall send a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must also note the following: the case title, the docket number of this CAFO and the billing document number (the billing document number will be assigned in a separate letter).

(b) For a check sent by overnight mail, Respondent shall send a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must also note the following: the case title, the docket number of this CAFO and the billing document number.

(c) For an electronic funds transfer, Respondent shall wire the payment, payable to "Treasurer, United States of America," to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read: "D68010727  
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: the case title, the docket number of this CAFO and the billing document number.

(d) Respondent may also make its payment on-line through the Department of Treasury by going to [www.pay.gov](http://www.pay.gov) and entering "SFO 1.1" in the "Search Public Forms" field.

35. For a payment made by U.S. Postal Service mail or overnight mail, Respondent shall send a transmittal letter which states Respondent's name, complete address, the case docket number and the billing document number along with the payment. Respondent shall also send a copy of the check and transmittal letter to:

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

Robert Allen, Environmental Engineer  
Pesticides and Toxics Compliance Section (DT-8J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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



36. For a payment made by electronic funds transfer or on-line, Respondent shall send a letter to the addressees listed in the immediate paragraph above which states Respondent's name, complete address, the case docket number and the billing document number, and the date of the electronic funds transfer or on-line payment.

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

38. If Respondent does not pay the civil penalty timely, the 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.

39. Pursuant to 31 C.F.R. § 901.9, and 31 U.S.C. § 3717, Respondent shall pay the following interest and late charges on any amount overdue pursuant to this CAFO:

(a) Interest. Any unpaid portion of the civil penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on any unpaid portion of the civil penalty that is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b).

(b) Monthly Handling Charge. Respondent shall pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar day period over which an unpaid balance remains.

(c) Non-Payment Penalty. On any portion of the civil penalty that is past due more than ninety (90) calendar days, Respondent shall pay a non-payment penalty of six percent (6%) per year, which will accrue from the date the penalty payment became due and

was not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b) above.

**General Provisions**

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

41. 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.

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

43. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 313 of EPCRA, 42 U.S.C. § 11023.

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

45. Each person signing this 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.

46. Each party agrees to bear its own costs and attorney's fees, in this action.

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

**For Durga, Inc., DBA Ohio Circuits, Twinsburg, OH, Respondent:**

6/24/08  
Date

Prakash Patel - President  
Prakash Patel, President

**For the United States Environmental Protection Agency, Complainant:**

7/15/08  
Date

*Margaret M. Guerriero*  
Margaret M. Guerriero, Director  
Land and Chemicals Division  
United States Environmental Protection Agency  
Region 5

**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, U.S. EPA, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7/21/08  
Date

*Walter W. Kovalich*  
Bharat Mathur *for*  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5

RECEIVED  
EPA REGION 5  
JUL 23 2008


**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Durga, Inc, was filed on July 22, 2008, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7001 0320 0005 8921 6334 a copy of the original to the Respondent:

Nilesh Patel  
Durga, Inc  
2250 East Aurora Road  
Twinsburg, Ohio 44087

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Terry Stanuch, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
\_\_\_\_\_  
Frederick J. Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. EPCRA-05-2008-0018

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EPA REGION 5  
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CHICAGO, ILLINOIS