

BARNES & THORNBURG LLP

Charles Denton
(616) 742-3974
cdenton@btlaw.com

Suite 1000
171 Monroe Avenue, NW
Grand Rapids, MI 49503-2694 U.S.A.
(616) 742-3930
Fax (616) 742-3999

www.btlaw.com

March 23, 2015

FEDERAL EXPRESS

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604



Re: *In the Matter of: Allegan Metal Finishing Company*
Docket No. EPCRA-05-2015-0010

Dear Regional Hearing Clerk:

Enclosed for filing, please find an original and one copy of the Appearance and Respondent's Motion for Extension of Time to Answer Complaint and Request for Formal Hearing for the above-referenced matter.

Very truly yours,

BARNES & THORNBURG LLP

A handwritten signature in black ink, appearing to be "Charles M. Denton".

Charles M. Denton

CMD/njh

Enclosures

c: Walter C. Sosnowski
Jose de Leon, Esq.

GRDS01 CDENTON 504729v1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. EPCRA-05-2015-0010
)
Allegan Metal Finishing Company,) Proceeding to Assess a Civil Penalty Under
Allegan, Michigan,) 325(c)(1) of the Emergency Planning and
) Community Right-to-Know Act of 1986
Respondent.)
_____)

APPEARANCE

COMES NOW the law firm of Barnes & Thornburg LLP, by the undersigned, and enters its Appearance on behalf of Allegan Metal Finishing Company in the above-captioned matter. Mr. Denton is authorized to receive service for Respondent relating to this proceeding.

Respectfully submitted,

Dated: March 23, 2015

By: 
Charles M. Denton
BARNES & THORNBURG LLP
171 Monroe Avenue, N.W., Suite 1000
Grand Rapids, Michigan 49503
(616) 742-3974
charles.denton@btlaw.com

*Counsel for Respondent Allegan Metal
Refinishing Company*



CERTIFICATE OF SERVICE

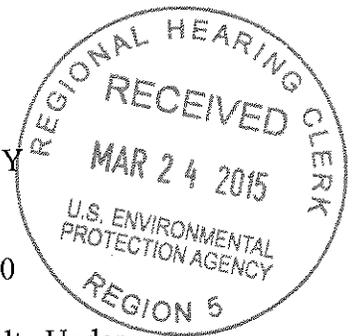
The undersigned attorney hereby certifies that a copy of Appearance has been served this 23rd day of March 2015, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the following:

Jose de Leon (C-14-J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604



Charles M. Denton

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. EPCRA-05-2015-0010
)
Allegan Metal Finishing Company,) Proceeding to Assess a Civil Penalty Under
Allegan, Michigan,) 325(c)(1) of the Emergency Planning and
) Community Right-to-Know Act of 1986
Respondent.)
)

**RESPONDENT'S MOTION FOR EXTENSION OF TIME
TO ANSWER COMPLAINT and REQUEST FOR FORMAL HEARING**

Respondent Allegan Metal Finishing Company ("AMFCO"), through its undersigned legal counsel, moves for an indefinite extension of time from its original April 1, 2015 deadline for filing an Answer to the Complaint in the above-captioned matter for good cause shown as described below, and further requests a Formal Hearing on such allegations to preserve that right. AMFCO makes this request pursuant to 40 C.F.R. § 22.7(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules").

In support of this Motion, Respondent AMFCO states:

1. After several months of unsuccessful settlement negotiations to amicably resolve the allegations contained in the Complaint in the above-captioned matter ("Complaint"), the U.S. Environmental Protection Agency ("EPA") served the Complaint via certified mail upon AMFCO, received on or about Monday, March 2, 2015.
2. According to the Consolidated Rules (40 C.F.R. § 22.15(a)), any Answer to the Complaint must be filed with the EPA Regional Hearing Officer within 30 days of service of the Complaint. Thirty days from the date of service of this Complaint on AMFCO would therefore be April 1, 2015.

3. Shortly after receipt of the Complaint, AMFCO's only facility at 1274 Lincoln Road, Allegan, Michigan—the same facility at issue in the Complaint—was totally destroyed by a fire on Sunday, March 15, 2015.

4. As reported by local media outlets, fire departments responded to the fire at 1:40 a.m. Sunday morning, and remained on scene for over nineteen hours. *Industrial fire in Allegan still smoking Sunday afternoon*, MLive (Mar. 15, 2015); *Fire destroys Allegan Metal Finishing; Cause under investigation*, MLive (Mar. 16, 2015). Both independent news stories are attached as Exhibit A.

5. AMFCO's operating facility and business office was completely destroyed. *Id.*; *see also, More than 100 left jobless after fire destroys Allegan Metal Finishing Co.*, Holland Sentinel (Mar. 16, 2015) (attached as Exhibit B).

6. Emergency response officials from both Michigan's Department of Environmental Quality ("DEQ") and EPA, as well as the local fire department of course, were on-scene in response to the catastrophic fire and each of the agencies is aware of the incident.

7. AMFCO personnel have remained in close contact with both Michigan DEQ and EPA following the fire, as evidenced by each agency's approval of AMFCO's March 15, 2015 Contingency Safety Plan for EPA and the State of Michigan. *See* E-mail from AMFCO to Mark Ducharme, Michigan DEQ, and Andrew Maguire, EPA, et al. (Mar. 15, 2015 (transmitting Draft Copy of AMFCO Contingency Safety Plan); E-mail from Mark Ducharme, Michigan DEQ, to AMFCO, et al. (Mar. 15, 2015); E-mail from Andrew Maguire, EPA, to AMFCO, et al. (Mar. 15, 2015). The AMFCO Draft Safety Plan and each agency's approval of it are attached hereto as Exhibit C.

8. AMFCO is in the process of dealing with the destruction caused by the fire and the aftermath of the losses from the fire, including securing the site, consulting with its insurers, salvaging anything of value, assisting local investigators regarding the cause of the fire, consulting with representatives from Michigan DEQ and EPA, working with customers on parts and products destroyed, assisting its employees to find new jobs who are out of work following the fire, and evaluating whether or not this small family business will continue.

9. EPA is aware that AMFCO has contested the allegations contained in the Complaint since they were first presented to AMFCO in April 2014.

10. As a result of this unforeseeable and catastrophic emergency, for good cause shown, AMFCO requests an indefinite continuance of the April 1, 2015 deadline for providing an Answer (and any other pre-hearing exchanges) to the Complaint. AMFCO moves that it be granted an indefinite continuance of the 40 C.F.R. § 22.15 deadline to respond to the Complaint as allowed by the Consolidated Rules in 40 C.F.R § 22.7(b), and will provide a further status update by Friday, May 1, 2015.

11. Counsel for AMFCO contacted Regional Counsel for EPA on this matter, Jose de Leon, on March 18, 2015, seeking concurrent in this request; however, Mr. de Leon, on behalf of EPA, would not agree to any extension of the deadline to Answer EPA's Complaint, despite this horrific event threatening AMFCO's very existence.

12. AMFCO further hereby requests a Formal Hearing pursuant to 40 C.F.R. § 22.15(c) on the EPA allegations in the Complaint to preserve that right, pursuant to a scheduling order eventually to be issued in this matter.

13. A proposed Order is attached.

WHEREFORE, AMFCO respectfully moves the Hearing Officer to GRANT its Motion for Extension of Time to Answer Complaint and allow AMFCO's Answer to the Complaint to be filed with the Regional Hearing Clerk at a later date to be determined, conduct a Formal Hearing on the EPA allegations pursuant to a scheduling order to be issued, together with awarding Respondent such further and other relief as may be just and equitable under the circumstances.

Respectfully submitted,

Dated: March 23, 2015

By: 

Charles M. Denton
BARNES & THORNBURG LLP
171 Monroe Avenue, N.W., Suite 1000
Grand Rapids, Michigan 49503
(616) 742-3974
charles.denton@btlaw.com

*Counsel for Respondent Allegan Metal
Refinishing Company*

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of Respondent's Motion for Extension of Time to Answer Complaint and Request for Formal Hearing has been served this 23rd day of March 2015, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the following:

Jose de Leon (C-14-J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604



Charles M. Denton

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. EPCRA-05-2015-0010
)
Allegan Metal Finishing Company,)
Allegan, Michigan,) Proceeding to Assess a Civil Penalty Under
) 325(c)(1) of the Emergency Planning and
) Community Right-to-Know Act of 1986
Respondent.)
)
_____)

**ORDER GRANTING RESPONDENT'S MOTION FOR EXTENSION OF TIME
TO ANSWER COMPLAINT and REQUEST FOR FORMAL HEARING**

This matter comes before the Hearing Officer on the Motion of Respondent Allegan Metal Finishing Company ("AMFCO") for an indefinite extension of time by which to provide any Answer related to the United States Environmental Protection Agency's Complaint in this matter.

AMFCO shall provide a status update to the Hearing Officer and U.S. Environmental Protection Agency regarding its ability to provide an Answer to the Complaint served in this matter on or before May 1, 2015.

This Court, having considered the relevant facts and being duly advised, finds that Allegan Metal Finishing Company's Motion for Extension of Time should be and is hereby **GRANTED**.

A Formal Hearing on this matter will be scheduled at a later date pursuant to a future scheduling order.

So **ORDERED** this ____ day of _____, 2015.

Honorable
Administrative Law Judge
U.S. Environmental Protection Agency

Copies to:

Charles M. Denton
BARNES & THORNBURG LLP
171 Monroe Avenue, N.W., Suite 1000
Grand Rapids, Michigan 49503

Jose de Leon (C-14-J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604



Industrial fire in Allegan still smoking Sunday afternoon

Al Jones | ajones5@mlive.com By Al Jones | ajones5@mlive.com

Follow on Twitter

on March 15, 2015 at 2:51 PM, updated March 15, 2015 at 4:15 PM

ALLEGAN, MI - A few blocks of M-89 in Allegan were cordoned off early Sunday afternoon as firefighters and sheriff's deputies continued to check a fire that started early Sunday morning at Allegan Metal Finishing Co.

Allegan County Sheriff's deputies and firefighters from various area fire departments were called at about 1:40 a.m. Sunday to the metal finishing company at 1274 Lincoln Road (M-89) to douse a fire.

They remained on the scene past 3 p.m. with firefighters spraying water on what appeared to be still smoldering facilities at the large business and searching for hot spots.

Sheriff's deputies evacuated residents and businesses for several blocks adjacent to the fire, including a mobile home park, but did not indicate if they feared an explosion or that chemicals inside the plant may become hazardous.

At just after 3 p.m. Sunday, a dispatcher for the Allegan County Sheriff's Office said the area remained evacuated. Traffic also continued to be diverted from M-89 between 26th Street and 113th Avenue.

Firefighters from the Allegan district -- including Hopkins and Martin -- were on the scene Sunday afternoon. Otsego firefighters helped earlier, according to authorities at the scene.

© 2015 MLive.com. All rights reserved.

EXHIBIT A, page 1



Fire destroys Allegan Metal Finishing; Cause under investigation

Aaron Mueller | amueller1@mlive.com By Aaron Mueller | amueller1@mlive.com

Follow on Twitter

on March 16, 2015 at 10:10 AM, updated March 16, 2015 at 10:11 AM

ALLEGAN, MI -- A fire at Allegan Metal Finishing Sunday left the facility a total loss.

Allegan Fire Chief Bruce Hoyer said he doesn't have an exact figure for how much was lost in the blaze but said the building was completely destroyed. Seven fire departments responded to the fire at about 1:40 a.m. at the business at 1274 Lincoln Road (M-89). Firefighters were on scene for 19 hours, Hoyer said.

Police evacuated residents and businesses for several blocks adjacent to the fire, including a mobile home park for several hours. When Department of Environmental Quality officials determined the air was safe, the evacuation order was lifted Sunday evening, Hoyer said.

Traffic was also shut down for a few blocks on M-89 for several hours.

The cause of the fire is under investigation. The Michigan State Police fire marshal will be on scene Tuesday to try to determine the cause.

Allegan Metal Finishing Company employs about 80 people. An employee meeting was scheduled for Monday morning. Michigan Works will be there to assist employees to in filing for unemployment and finding other work.

© 2015 MLive.com. All rights reserved.

EXHIBIT A, page 2

By Curtis Wildfong
@hollandsentinel.com
(616) 546-4279

March 16, 2015 4:47PM

Print Page

More than 100 left jobless after fire destroys Allegan Metal Finishing Co.

Owner Walter Sosnowski, who spoke with his workers during Monday's employment meeting and then went directly to the site of the fire to meet with an insurance adjuster, said a lot needs to be done before he can definitively say what will happen. Rebuilding is an option, but even that decision will have to wait.

Gathered in the parking lot of the Blessed Sacrament Catholic Church in Allegan, now former employees of Allegan Metal Finishing Co. shook hands, hugged and told one another how much they appreciated working alongside each other.

Not even two miles down Lincoln Road, the burnt smell of still-smoldering piles of rubble still filled the air, more than 24 hours after a fire ripped through AMFC's facility.

A family-owned business since its inception in 1958, AMFC has provided zinc-plating services to different companies from a variety of industries across North America.

Just a few years shy of its 60th birthday, the Allegan-based company's future is uncertain after a devastating fire tore through the building at 1274 Lincoln Road in Allegan Township on Sunday, March 15. No injuries were reported. The facility was completely destroyed; a damage estimate has not been released yet.

On Monday morning, the company's more than 100 employees didn't report to work; they instead met at Blessed Sacrament Church to find out what comes next.

Michigan Works! met with employees to provide them information on how to apply for unemployment and where to look for new jobs. Employees said Michigan Works! will soon be hosting a job fair strictly for AMFC employees, who went to bed Saturday with a job and woke up Sunday suddenly hunting for one.

"Working 36 years at the same place and now trying to find work the day after it dies ...," said Process Department Manager John Miller, who started with the company in 1985. "We have to do something."

Shawn McNees, an AMFC general labor worker, said he was shocked to learn the fire had taken the entire facility, and his job.

"Try and find another job. That's all I can do," he said.

It's unknown what exactly lies ahead for not only the former employees, but also the company, which has made Allegan County its home for 57 years.

Owner Walter Sosnowski, who spoke with his workers during Monday's employment meeting and then went directly to the site of the fire to meet with an insurance adjuster, said a lot needs to be done before he can definitively say what will happen. Rebuilding is an option, but even that decision will have to wait.

"We have no idea until we get a lot of things answered," he said.

The cause of the fire is unknown at this point, although neighbors said they heard at least two explosions prior to the fire, which shut down M-89 for several hours Sunday. The original fire call came in to central dispatch around 1:30 a.m. The roadway didn't reopen until around 8 p.m. Sunday evening.

A state fire marshal was expected to be on scene Tuesday to help determine a cause.

For the foreseeable future, the employees are left searching for a new way of making a living. But even fresh off the devastating news, several were upbeat.

"I don't know what comes next," said James Vanhorn Jr., a general labor worker with AMFC for the past nine years. He lives right next door to the facility. "You have to dust yourself off. We're going to get up and get strong and do what we gotta do."

— Follow this reporter on Facebook and Twitter @SentinelCurtis.



An insurance adjuster and a pair of employees of American Metal Finishing Company walk by the rubble left behind Monday, March 16, 2015, after a devastating fire destroyed the company's facility in Allegan Township Sunday. Curtis Wildfong/Sentinel staff

<http://www.hollandsentinel.com/article/20150316/NEWS/150319235>

Print Page

EXHIBIT B

-----Original Message-----

From: Shannon Fuller [<mailto:shannebug@gmail.com>]

Sent: Sunday, March 15, 2015 8:44 PM

To: ducharm@michigan.gov; blazic@michigan.gov; Denton, Charles; maguire.andrew@epa.gov

Cc: wsosnowski@amfco.biz; tlkski@me.com; rsosnowski@amfco.biz

Subject: UPDATED CONTINGENCY SAFETY PLAN - DRAFT COPY

Any questions please call Walter @ 269.370.3511

EXHIBIT C, page 1

DRAFT COPY

3-15-15 - AMFCO

Contingency Safety Plan for EPA & The State of Michigan:

- **The fire department is currently on scene**
- **3-15-15 @ 5:25pm.**

- **Upon their departure:**
 - **Secure Fencing (obtained from All Fence Inc) will be placed in front of unsecured part of AMFCO (ASAP).**
 - **All permanent fencing will be secured and locked as usual.**
 - **A lighted vehicle with our security personal will be on the premises directed towards non fenced area that is exposed on street side (M-89/Lincoln).**
 - **An individual will be stationed in front of AMFCO until fencing is in place. He/she will provide security, safety, deter trespassers and deny access to AMFCO.**
 - **If there is any emergency (fire, explosion, trespassing, or known chemical leak), immediate contact will be made to the following:**
 - **Police (911),**
 - **Fire Department 673-9643 (Bruce Hoyer-Fire Chief)**
 - **Mark Ducharme (SEQA) 517-420-3392, Home 269-685-2259**
 - **Andrew Maquire (EPA) 312-353-8782**
 - **Ryan Blazic (EQA) 269-270-2008**
 - **Scott Corbin 616-218-2533**

AMFCO will also be working on environmental cleanup with the proper personnel as soon as possible.

IE. When Fire Marshall allows us to start clean up. We will be in contact with many different services of this type, along with our in house environmental personnel.

Additional Contact Information Concerning Remedial Environmental Clean Up Services we intend to use:

SET Environmental # 877-437-7455

K&D Industries West Inc # 269-694-6739

Appropriate reports will also be filed.

Sincerely,

ALLEGAN METAL FINISHING COMPANY

**Walter C. Sosnowski
President
269-370-3511**

-----Original Message-----

From: Ducharme, Mark (DEQ) [<mailto:DUCHARMEM@michigan.gov>]

Sent: Sunday, March 15, 2015 7:27 PM

To: Shannon Fuller

Cc: Blazic, Ryan (DEQ); Denton, Charles; maguire.andrew@epa.gov; wsosnowski@amfco.biz; tlkski@me.com; rsosnowski@amfco.biz

Subject: Re: UPDATED CONTINGENCY SAFETY PLAN - DRAFT COPY

Received and approved revised plan. Please update after contracts are procured and scopes of work or plans of action developed for removal of hazardous substances.

Thank you.

Sent from my iPhone

> On Mar 15, 2015, at 7:23 PM, Shannon Fuller <shannebug@gmail.com> wrote:

>

> <AMFCO (EPA).docx>

>

>

>

>

>

> Any questions please call Walter @ 269.370.3511

-----Original Message-----

From: Maguire, Andrew [<mailto:maguire.andrew@epa.gov>]

Sent: Sunday, March 15, 2015 7:27 PM

To: Shannon Fuller; ducharm@michigan.gov; blazicr@michigan.gov; Denton, Charles

Cc: wsosnowski@amfco.biz; tlkski@me.com; rsosnowski@amfco.biz

Subject: Re: UPDATED CONTINGENCY SAFETY PLAN - DRAFT COPY

Received and approved. Please coordinate with Mark with MDEQ with further plans.

Andy Maguire

USEPA

Original Message

From: Shannon Fuller

Sent: Sunday, March 15, 2015 19:23

To: ducharm@michigan.gov; blazicr@michigan.gov; cdenton@btlaw.com; Maguire, Andrew

Cc: wsosnowski@amfco.biz; tlkski@me.com; rsosnowski@amfco.biz

Subject: UPDATED CONTINGENCY SAFETY PLAN - DRAFT COPY

Any questions please call Walter @ 269.370.3511