



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

DEC 01 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Greg Searcy
VP and General Manager
Aluma-Tec Industries
W222 N833 Cheaney Road
Waukesha, WI 53186

Re: Aluma-Tec Industries, Waukesha, Wisconsin
Consent Agreement and Final Order – Docket No: EPCA-05-2008-0009

Dear Mr. Searcy:

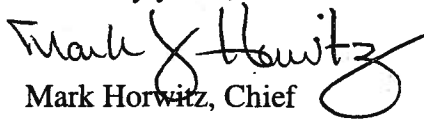
Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on December 1, 2008

Please pay the EPCRA civil penalty in the amount of \$ 20,448 in the manner prescribed in paragraphs 9 and 10 and reference your check with the number BD 2750944E005 and docket number EPCRA-05-2008-0009.

Your payment is due on January 1, 2008.

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 Susan Tennenbaum, Assistant Regional Counsel, at (312) 886-0273. Thank you for your assistance in resolving this matter.

Sincerely yours,


Mark Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

RECEIVED
DEC - 1 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
RECEIVED
REGISTRATION CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:) Docket No. EPCRA-05-2008-0009
)
Aluma-Tec Industries)
Waukesha, Wisconsin,)
Respondent.)
_____)

Consent Agreement and Final Order

1. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.
2. On April 7, 2008, U.S. EPA filed the Complaint in this action against Respondent, Aluma-Tec Industries ("Aluma-Tec"). The Complaint alleges that Respondent violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), by failing to submit to the Wisconsin State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC) and Peewaukee Fire Department, for calendar years 2004, 2005 and 2006, completed Emergency and Hazardous Chemical Inventory Forms including sulfuric acid and nitric acid.
3. Respondent did not file an Answer, but expressed its willingness to settle this matter. The parties reached an agreement as set forth herein.

Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint.
5. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).
6. The parties consent to the terms of this CAFO.

7. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

8. The complaint proposed a civil penalty of \$85,425. In consideration of Respondent's agreement to perform a supplemental environmental project, its cooperation, and the quick settlement, Complainant has determined that an appropriate civil penalty to settle this action is \$20,448.

9. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,448 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:
(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

(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: Aluma-Tec Industries, the docket number of this CAFO and the billing document number 2750944E005.

10. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check(s) and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

Ruth McNamara, (SC-6J)
Chemical Emergency Preparedness and
Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

11. This civil penalty is not deductible for federal tax purposes.
12. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 25, below, 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.
13. 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.

Supplemental Environmental Project

14. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by purchasing and installing equipment that would allow the recycling of sulfuric acid, which is used in its anodizing process. The SEP will result in a reduction in Respondent's use of sulfuric acid of approximately 9,000 pounds per year and a reduction of risk from accidental sulfuric acid spills and releases to the public's POTW.

15. Respondent must complete the SEP as follows at its facility at W222 N833 Cheaney Road, Waukesha, Wisconsin:

- a. Within 120 days of the effective date of the CAFO, Respondent will complete installation of an acid purification unit to effectuate the SEP as described in paragraph 14, above.
- b. Within 30 days after installation of the acid purification unit, as referenced in subparagraph a, above, Respondent will submit a SEP completion report notifying U.S. EPA of the completion of the SEP. This report must contain the following information:
 1. A detailed description of the SEP as completed, including the date that the acid purification unit commenced continuous operation;
 2. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
 3. Certification that Respondent has completed the SEP in compliance with this CAFO; and

4. A description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible.)
16. Respondent must spend at least \$41,815 to purchase and install the equipment for the SEP.
17. Respondent must continuously operate the equipment installed as the SEP for at least 3 years following its installation.
18. In the acid purification process, Respondent must not use any chemical that is more toxic or hazardous than sulfuric acid. Respondent must use Material Safety Data Sheets to determine the chemical's toxic and hazardous characteristics.
19. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
20. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.
21. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 10, above.
22. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the

information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

23. Following receipt of the SEP completion report described in paragraph 15, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 25.

24. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 25, below.

25. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 16, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 16.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$5,000 in addition to any penalty required under subparagraph a, above.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$10,000 in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

- d. If Respondent fails to comply with the schedule in paragraph 15 for implementing the SEP or fails to submit timely the SEP completion report required by paragraph 15.b, above, Respondent must pay stipulated penalties for each failure to meet any applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$4,000	15th through 30th day
\$6,000	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

26. U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

27. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 9 and 10, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

28. Any public statement that Respondent makes referring to the SEP must include the following language, "Aluma-Tec Industries undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against the company for violations of Section 312(a) of the Emergency Planning & Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11022(a)."

29. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to

carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

30. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

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

General Provisions

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

33. 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.

34. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

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

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

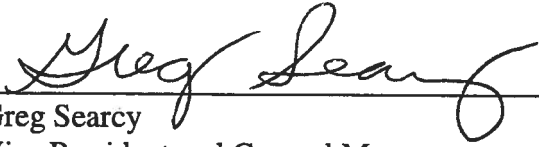
38. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

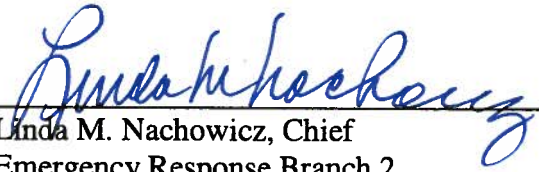
Aluma-Tec Industries, Respondent

11/10/08
Date

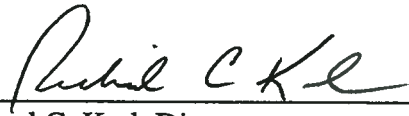

Greg Searcy
Vice President and General Manager

U.S. Environmental Protection Agency, Complainant

11/14/08
Date


Linda M. Nachowicz, Chief
Emergency Response Branch 2
Superfund Division

11-17-08
Date


Richard C. Karl, Director
Superfund Division

**In the Matter of:
Aluma-Tec Industries
Docket No. EPCRA-0502008-0009**

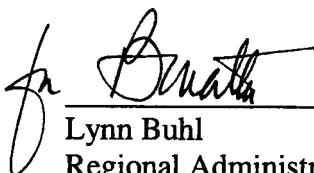
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PROTECTION AGENCY

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.

11-20-08
Date



Lynn Buhl
Regional Administrator
U.S. Environmental Protection Agency
Region 5

**In the Matter of:
Aluma-Tec Industries
Docket No. EPCRA-05-2008-0009**

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**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number EPCRA-05-2008-0009 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 Greg Searcy, Vice President and General Manager, Aluma-Tec Industries, by placing them in the custody of the United States Postal Service addressed as follows:

Greg Searcy
VP and General Manager
Aluma-Tec Industries
W222 N833 Cheaney Road
Waukesha, WI 53186

on the 1st day of December, 2008

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