



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

OCT 15 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

LaVaughn Daniel
Danco Anodizing
P.O. Box 660727
Arcadia, CA 91066

Re: Danco Anodizing, 2450 Deelyn Drive, Warsaw, Indiana
Consent Agreement and Final Order, Docket No. **EPCRA-05-2009-0003**

Dear Ms. Daniel:

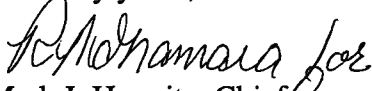
Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on October 15, 2008.

Please pay the EPCRA civil penalty in the amount of \$5,424 in the manner prescribed in paragraphs 43 and 44, and reference you check with the billing document number 2750944E002⁰⁰ and the docket number EPCRA-05-2009-0003.

Your payment is due on November 15, 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 Jose Deleon, Associate Regional Counsel, at (312) 353-7456. Thank you for your assistance in resolving this matter.

Sincerely yours,


Mark J. Horwitz, Chief
Chemical Emergency Preparedness
And Prevention Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2009-0003
)	
Danco Anodizing)	Proceeding to Assess a Civil Penalty
Warsaw, Indiana)	Under Section 325(c)(1) and (c)(2) of the
)	Emergency Planning and Community
Respondent.)	Right-to-Know Act of 1986,
<hr/>)	42 U.S.C. § 11045(c)(1) and (c)(2)

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and (c)(2), 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 Chief, Emergency Response Branch 2, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Danco Anodizing, a corporation doing business in the State of Indiana.
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.

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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 (LEPC), 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 I 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, MSDS.

12. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

13. 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 \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Alleged Violations

14. Respondent is a “person” as that term is defined under 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 2450 Deelyn Drive, Warsaw, Indiana (facility).

16. At all times relevant to this CAFO, Respondent 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 under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. Nitric acid and sulfuric acid are listed as toxic and hazardous substances under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1

20. Nitric acid CAS #7697-37-2 and sulfuric acid CAS#7664-93-9 are "extremely hazardous substances" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

21. Nitric acid CAS #7697-37-2 and sulfuric acid CAS#7664-93-9 both have a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

22. During at least one period of time in calendar year 2003, nitric acid and sulfuric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

23. During at least one period of time in calendar year 2004, nitric acid and sulfuric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

24. During at least one period of time in calendar year 2005, nitric acid and sulfuric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

25. OSHA requires Respondent to prepare, or have available, an MSDS for both nitric acid and sulfuric acid.

26. Respondent was required to submit to the state emergency response commission, local emergency planning committee, and fire department a completed emergency and hazardous chemical inventory form including nitric acid and sulfuric acid on or before March 1, 2004, for calendar year 2003.

27. Respondent was required to submit to the state emergency response commission, local emergency planning committee, and fire department a completed emergency and hazardous chemical inventory form including nitric acid and sulfuric acid on or before March 1, 2005, for calendar year 2004.

28. Respondent was required to submit to the state emergency response commission, local emergency planning committee, and fire department a completed emergency and hazardous chemical inventory form including nitric acid and sulfuric acid on or before March 1, 2006, for calendar year 2005.

29. At all times relevant to this CAFO, the Indiana State Emergency Response Commission was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

30. At all times relevant to this CAFO, the Kosciusko County Local Emergency Planning Committee was the LEPC for Kosciusko County, Indiana, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

31. At all times relevant to this CAFO, the Warsaw Fire Department was the fire department with jurisdiction over the facility.

32. Respondent has not submitted to the SERC, LEPC, and Warsaw Fire Department a completed Emergency and Hazardous Chemical Inventory Form including nitric acid and sulfuric acid for calendar year 2003.

33. Each day Respondent failed to submit to the SERC, LEPC, and Warsaw Fire Department a completed Emergency and Hazardous Chemical Inventory Form including nitric acid and sulfuric acid by March 1, 2004, for calendar year 2003 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

34. Respondent has not submitted to the SERC, LEPC, and Warsaw Fire Department a completed Emergency and Hazardous Chemical Inventory Form including nitric acid and sulfuric acid for calendar year 2004.

35. Each day Respondent failed to submit to the SERC, LEPC, and Warsaw Fire Department a completed Emergency and Hazardous Chemical Inventory Form including nitric acid and sulfuric acid by March 1, 2005, for calendar year 2004 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

36. On January 10, 2007 Respondent submitted a completed Emergency and Hazardous Chemical Inventory Form including nitric acid and sulfuric acid to the SERC for calendar year 2005 due March 1, 2006.

37. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including nitric acid and sulfuric acid by March 1, 2006, for calendar year 2005 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

38. On January 10, 2007 Respondent submitted a completed Emergency and Hazardous Chemical Inventory Form including nitric acid and sulfuric acid to the LEPC for calendar year 2005 due March 1, 2006.

39. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including nitric acid and sulfuric acid by March 1, 2006, for calendar year 2005 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

40. On January 10, 2007 Respondent submitted a completed Emergency and Hazardous Chemical Inventory Form including nitric acid and sulfuric acid to the Warsaw Fire Department for calendar year 2005 due March 1, 2006.

41. Each day Respondent failed to submit to the Warsaw Fire Department a completed Emergency and Hazardous Chemical Inventory Form including nitric acid and sulfuric acid by March 1, 2006, for calendar year 2005 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

42. In consideration of Respondent's cooperation, good faith negotiations and agreement to perform a supplemental environmental project, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$5,424.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,424 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 U.S. Mail]

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

[for check 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 Danco Anodizing, the docket number of this CAFO and the billing document number _____.

[for electronic funds transfer]

Respondent must pay by electronic funds transfer, payable to “Treasurer, United States of America,” and sent 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 Danco Anodizing, the docket number of this CAFO and the billing document number

_____.

[for 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.

44. 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-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

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

46. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 58, 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.

47. 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

48. Respondent must complete a supplemental environmental project (SEP) designed to protect workers from physical exposure in the event of a pipe and/or pump failure as well as well

minimize the possibility of a chemical spill. This project will also help protect humans and the environment from exposure to chemical and/or fumes in the event of a release.

49. At its Warsaw facility, Respondent must complete the SEP as follows:

Danco Annodizing will construct a chemical storage room using non-combustible materials in a fire resistant design along with the installation of specialized safety equipment for use on a daily basis as well as in emergency situations. The room will be constructed of concrete blocks with steel doors. It will have a special chemical dispensing operation that will help prevent accidental chemical releases due in part to the use of heavy duty chemical resistant equipment and housing to protect the equipment. The room will have an exhaust system to evacuate fumes from the immediate area which will be attached to their fume scrubber to remove toxics. The project will cost \$46,262 to complete, and should be operational in six months from the commencement of the project.

50. Respondent must spend at least \$46,262 to complete the project.

51. 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.

52. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

53. Respondent must submit a SEP completion report to U.S. EPA by January 1, 2009.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. 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;

- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

54. 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 44, above.

55. 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.

56. Following receipt of the SEP completion report described in paragraph 53, 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 58.

57. 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 58, below.

58. 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 50, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and \$46,262.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$16,273 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 \$16,273 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 dates for implementing the SEP, and/or fails to submit timely the SEP completion report, as required in paragraph 53, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$200	15th through 30th day
\$300	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.

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

60. 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 43 and 44, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

61. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of Section 312 of the Emergency Planning and Community Right-to-Know Act."

62. 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.

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

General Provisions

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

65. 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.

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

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

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

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

70. 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.


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

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

In the Matter of:
Danco Anodizing, Warsaw, Indiana
Docket No. EPCRA-05-2009-0003


Danco Anodizing, Respondent

9-24-08
Date


La Vaughn Daniel
Environmental & Safety Manager
Danco Anodizing

U.S. Environmental Protection Agency, Complainant

10/3/08
Date


Linda Nachowicz, Chief
Emergency Response Branch 2
Superfund Division

10/3/08
Date


fr Richard C. Karl, Director
Superfund Division

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In the Matter of:
Danco Anodizing, Warsaw, Indiana
Docket No. *EPCRA-05-2009-000325.*

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.

Date *10-07-08*



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

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In the Matter of:
Danco Anodizing, Warsaw, Indiana
Docket No. *EPCRA-05 2009-000372.*

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number _____ 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 Danco Anodizing by placing them in the custody of the United States Postal Service addressed as follows:

LaVaughn Daniel
Danco Anodizing
P.O. Box 660727
Arcadia, CA 91066

on the 15th day of October, 2008

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

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