



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

NOV 30 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James R. Gay
Owner
Nicro Finishing, LLC
6431 East Palmer
Detroit, Michigan 48211

Re: Nicro Finishing, LLC, Detroit, Michigan
Consent Agreement and Final Order – Docket No: EPCRA-05-2009-0023

Dear Mr. Gay:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on NOV 30 2009.

Please pay the civil penalty in the amount of \$1,500.00 plus interest in the manner prescribed in paragraph 10 and Attachment A, and reference your checks with the number BD 2751064E008 and docket number EPCRA-05-2009-0023.

Your first payment is due on DEC 30 2009 (within thirty-calendar days of the filing date) and Attachment A lists the amount due and the due dates.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Luis A Oviedo, Associate Regional Counsel, at (312) 353-9538. Thank you for your assistance in resolving this matter.

Sincerely,

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-05-2009-0023
)	
Nicro Finishing, LLC)	Proceeding to Assess a Civil Penalty Under
Detroit, Michigan)	Section 325(c)(1) and (c)(2) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986
<hr/>)	

RECEIVED
NOV 30 2009

Consent Agreement and Final Order

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

1. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
2. On July 17, 2009, U.S. EPA filed the Complaint in this action against Respondent Nicro Finishing, LLC.
3. The Complaint alleges that Respondent violated Section 311 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11021, by failing to submit to the Michigan State Emergency Response Commission (SERC) and City of Detroit Fire Department as the Local Emergency Planning Committee (LEPC) a Material Safety Data Sheet or a list for sulfuric acid, nitric acid, and sodium cyanide; and violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), by failing to submit to the SERC and LEPC a completed Emergency and Hazardous Chemical Inventory Form for calendar years 2005, 2006, 2007, and 2008 by the March 1 reporting deadline.
4. Respondent filed an Answer and requested a hearing under Section 325(b)(1)(B) of EPCRA, 42 U.S.C. § 11045(b)(1)(B).

Stipulations

5. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint.

6. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).
7. The parties consent to the terms of this CAFO.
8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

9. In consideration of Respondent's inability to pay, Complainant has determined that an appropriate civil penalty to settle this action is \$1,500.00 plus interest.

10. Within 30 days after the effective date of this CAFO, Respondent must pay the first payment of \$100.00 civil penalty for the EPCRA violations. Attachment A to this CAFO lists the payment plan including due dates and amounts. 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: Nicro Finishing, LLC, the docket number of this CAFO (EPCRA-05-2009-0023), and the billing document number 275104E008.

for electronic funds transfer

Respondent must pay the penalty 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 should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: Nicro Finishing, LLC, the docket number of this CAFO (EPCRA-05-2009-0023), and the billing document number 2751064E008.

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.

11. 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 checks and transmittal letter to:

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

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

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

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

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

14. 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, EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

16. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

17. Respondent certifies that it is complying with Section 311 of EPCRA, 42 U.S.C. § 11021, and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

19. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for Section 311 and 312 of EPCRA.

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

21. 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.

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

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

In the Matter of:
Nicro Finishing, LLC, Detroit, Michigan
Docket No. EPCRA-05-2009-0023

Nicro Finishing, LLC, Respondent

11-18-09
Date

James R. Gay
Mr. James R. Gay
Owner
Nicro Finishing, LLC

U.S. Environmental Protection Agency, Complainant

11-24-09
Date

Thomas H. El-Zein, for
Jason H. El-Zein, Chief
Emergency Response Branch 1
Superfund Division

11-25-09
Date

Richard C. Karl
Richard C. Karl, Director
Superfund Division

In the Matter of:
Nicro Finishing, LLC, Detroit, Michigan
Docket No. EPCRA-05-2009-0023

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.

11/25/09
Date

Walter W. Koralutsky
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

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**In the Matter of:
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Attachment A

Payment	Due by	Payment	Principal	Interest
1	30 days after	\$100.00	\$100.00	\$0.00
2	60 days after	\$103.45	\$100.00	\$3.45
3	90 days after	\$103.21	\$100.00	\$3.21
4	120 days after	\$102.96	\$100.00	\$2.96
5	150 days after	\$102.71	\$100.00	\$2.71
6	180 days after	\$102.47	\$100.00	\$2.47
7	210 days after	\$102.22	\$100.00	\$2.22
8	240 days after	\$101.97	\$100.00	\$1.97
9	270 days after	\$101.73	\$100.00	\$1.73
10	300 days after	\$101.48	\$100.00	\$1.48
11	330 days after	\$101.23	\$100.00	\$1.23
12	360 days after	\$100.99	\$100.00	\$0.99
13	390 days after	\$100.74	\$100.00	\$0.74
14	420 days after	\$100.49	\$100.00	\$0.49
15	450 days after	\$100.25	\$100.00	\$0.25
Total		\$1,525.90	\$1,500.00	\$25.90

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Nicro Finishing, LLC, Detroit, Michigan
Docket No. EPCRA-05-2009-0023

Certificate of Service

I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order 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 Nicro Finishing, LLC by placing them in the custody of the United States Postal Service addressed as follows:

James R. Gay
Owner
Nicro Finishing, LLC
6431 East Palmer
Detroit, Michigan 48211

Judge Spencer T. Nissen
Administrative Law Judge
U.S. EPA, Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Judge Susan L. Biro, Chief
Administrative Law Judge
U.S. EPA, Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

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NOV 30 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 30 day of November, 2009


James Entzminger
U.S. Environmental Protection Agency
Region 5