

NY  
IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA



DELAWARE VALLEY TOXICS COALITION

CIVIL ACTION

and

PHILADELPHIA AREA PROJECT ON  
OCCUPATIONAL SAFETY AND HEALTH

Plaintiffs,

FILED MAR - 4 1993

v.

ALUMINUM FINISHERS CORP.

Defendants.

NO. 92-CV-6496

CONSENT DECREE

WHEREAS, the plaintiffs, Delaware Valley Toxics Coalition ("DVTC") and Philadelphia Area Project on Occupational Safety and Health ("PHILAPOSH") filed a complaint against the defendant, Aluminum Finishers Corp. ("AFCO") alleging violations of the Emergency Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. §11001 et seq. relating to AFCO's facility at 700 East Godfrey Avenue, Philadelphia, Pennsylvania 19124; and

WHEREAS, plaintiffs seek declaratory relief, injunctive relief and the imposition of civil penalties; and

WHEREAS, defendant, AFCO, denies plaintiffs claims and does not admit the facts or allegations of the EPCRA violations in the complaint; and

WHEREAS, the parties have engaged in discussions relating to the settlement of this litigation, which discussions have included

an assessment of the facts related to plaintiffs' allegations of EPCRA violations; and

WHEREAS, the parties agree that settlement of this litigation and the entry of this Consent Decree without further litigation is the most appropriate means of resolving this action and is in the best interests of the parties and the public;

NOW THEREFORE, the parties hereby agree to enter into this Consent Decree which provides as follows:

1. This Court has jurisdiction over the parties and the subject matter of this lawsuit.
2. This Consent Decree shall apply to and be binding upon the parties to this action, their officers, directors, employees, successors and assigns.
3. This Consent Decree constitutes a full and complete settlement of claims alleged by plaintiffs against the defendant, its officers, directors, employees, successors and assigns, pursuant to EPCRA and to all claims which could have been alleged by plaintiffs against defendant, its officers, directors, employees, successors and assigns, pursuant to EPCRA up to and through the date this Consent Decree is approved by the Court.
4. This Consent Decree does not constitute an admission or adjudication of any allegation in the Complaint, nor of any conclusion of law with respect to any allegation in the Complaint or arising out of the Complaint.
5. This Consent Decree shall not constitute an admission or evidence of wrongdoing or misconduct or liability on the part of

defendant or any person affiliated with defendant; nor shall this Consent Decree be admitted in any proceeding against a party over that party's objection EXCEPT in a proceeding to enforce this Consent Decree.

6. The parties deem this Consent Decree to be an appropriate resolution of the lawsuit.

7. The parties deem this Consent Decree to be in the public interest.

8. (a) AFCO shall henceforth comply with all applicable requirements of EPCRA. AFCO shall furnish copies of these reports to plaintiffs' attorney, at the same time that AFCO sends these reports to the relevant governmental entities in the years 1993 and 1994, relating to the years 1992 and 1993, respectively.

(b) Whenever AFCO believes it is not required to file a Section 312 report or a Section 313 report AFCO shall so inform plaintiffs' attorney in writing of this situation in the years 1993 and 1994.

(c) AFCO shall send copies of EPCRA reports or certified statements denying need to file Sec. 312 or Sec. 313 reports to:

Jerome Balter, Esquire  
Public Interest Law Center of Philadelphia  
125 South 9th Street, Suite 700  
Philadelphia, PA 19107

9. (a) AFCO shall furnish, install and operate a waste water treatment system to neutralize and precipitate sodium aluminate compounds formed in AFCO's anodizing process with the intention of reducing or eliminating the suspended solids in AFCO's waste water effluent to the public sewer system.

(b) The waste water treatment system in subsection (a) shall be in accord with all applicable regulations and shall be installed and operating in accord with all applicable regulations within two (2) years of the date of the Court's approval of this Consent Decree.

(c) If AFCO relocates its facility subsequent to the date of the Court's approval of the Consent Decree, AFCO nevertheless shall install and operate the waste water treatment system at the new location within two years after the date of this Consent Decree.

(d) Within three (3) months of the date of approval of this Consent Decree AFCO shall provide plaintiffs' attorney with a complete schedule of the date for purchase (or lease) of the waste water treatment system, the date for the start of installation of the equipment, and the date when proper full time operation of the system is to occur. AFCO shall notify plaintiffs upon the commencement of the proper operation of the system, after which the plaintiffs shall have thirty (30) days to inspect the system at AFCO's facility. AFCO will also supply documentation to the plaintiffs of compliance with the schedule established pursuant to this Section.

(e) The two (2) year deadline for full time proper operation of the waste water treatment system may be extended only by express written consent of the parties except if AFCO is prevented from complying by a force majeure such as an Act of God; vendor failure or default or negligence; or labor dispute.

(f) In the event that AFCO does not comply with the requirements of this section AFCO will contribute \$15,000 to the Environmental Research Division of the Academy of Natural Sciences, 19th and Benjamin Franklin Parkway, Philadelphia, Pennsylvania 19103. Payment shall be due two (2) years after the date of approval of the consent decree if AFCO fails to comply with the requirements of this Section.

10. (a) The Philadelphia Local Emergency Planning Committee (P-LEPC) is the emergency planning committee for the Philadelphia emergency planning district created pursuant to Section 301(c) EPCRA, 42 U.S.C. §11001(c).

(b) AFCO shall pay the P-LEPC the sum of \$2,000.00 to support the work and activities of the P-LEPC. Payment shall be made to:

Philadelphia Local Emergency Planning Commission  
240 Spring Garden Street  
Philadelphia, PA 19123

11. (a) The Southeastern Pennsylvania Chapter of the American Red Cross works closely with the Philadelphia Local Emergency Planning Committee to provide emergency shelter, food and clothing in the event of emergencies, including emergencies that may result from spills, fires or explosions involving toxic substances.

(b) AFCO shall pay the Southeastern Pennsylvania Chapter of the American Red Cross the sum of \$2,000.00 to support its emergency relief work and activities. Payment shall be made to:

Southeastern Pennsylvania Chapter  
of the American Red Cross  
23rd and Chestnut Streets  
Philadelphia, PA 19103

12. (a) The Delaware Valley Toxics Coalition ("DVTC") is a non-profit tax-exempt (§501(C)(3)) organization established in 1979 to support community and worker efforts to eliminate or reduce human exposure to hazardous and toxic substances. Toward this goal DVTC coordinated the efforts of environmental, trade union and community groups to establish the Philadelphia Right-To-Know Ordinance which was the first law in the United States that entitled workers and communities to information about the hazardous and toxic substances in the workplaces and being released from the workplaces. It was the Philadelphia Right-To-Know Ordinance which was the forerunner of numerous other right-to-know statutes such as the New Jersey Worker and Community Right-To-Know Act, the Pennsylvania Worker and Community Right-To-Know Act, the Hazard Communication Regulation under the federal Occupational Safety and Health Act; and the Emergency Planning and Community Right-To-Know Act ("EPCRA").

(b) DVTC compiles and publishes Section 313, EPCRA, Toxic Chemical Release data for the greater Philadelphia area (Bucks, Chester, Delaware, Montgomery and Philadelphia counties). This material is made available to citizens and the media.

(c) DVTC provides training and education to community groups throughout the greater Philadelphia area regarding environmental pollution; the sources of such pollution and the

means for reducing and eliminating human exposure to these pollutants.

(d) AFCO shall pay DVTC the sum of \$12,000 to support the work and activities of DVTC. Payment shall be made to the:

Delaware Valley Toxics Coalition  
125 South 9th Street  
Philadelphia, PA 19107

13. (a) The Philadelphia Area Project on Occupational Safety and Health ("PHILAPOSH") is a non-profit tax-exempt (§501(C)(3)) corporation. It was founded in 1975 to assist workers in preventing on the job injuries from accidents and to prevent or minimize exposure to hazardous and toxic substances.

(b) PHILAPOSH initiated the movement for right-to-know legislation in 1977. The movement was successful in achieving the Philadelphia right to know ordinance, the New Jersey and Pennsylvania Community/worker right to know laws; the Hazard Communication regulation of OSHA and the EPCRA statute.

(c) Approximately 200 trade unions in the greater Philadelphia area belong to PHILAPOSH. These unions include approximately 300,000 workers. PHILAPOSH provides these unions and workers with educational and training programs to reduce exposure to hazardous and toxic substances.

(d) AFCO shall pay PHILAPOSH the sum of \$4,000.00 to support the work and activities of PHILAPOSH. Payment shall be made to:

PHILAPOSH  
3001 Walnut Street  
Philadelphia, PA 19104

14. AFCO shall pay plaintiffs' reasonable attorney fees and costs in the amount of \$5,000. Payment shall be made to:

Public Interest Law Center of Philadelphia  
125 South 9th Street, Suite 700  
Philadelphia, PA 19107

15. (a) AFCO and counsel for plaintiffs shall send all payment checks in joint transmittal letters to the institutions identified in paragraphs 10(b), 11(b), 12(d) and 13(d).

(b) Payments shall be payable within ten (10) days of the date on which this Consent Decree is approved by the Court.

16. Neither DVTC nor PHILAPOSH nor any other entity or person acting with, by or through DVTC or PHILAPOSH, in either their individual or representative capacity, shall file or intervene in any lawsuit pursuant to EPCRA or participate in any EPCRA administrative proceeding or hearing concerning the alleged violations referred to in the Complaint or in this Consent Decree.

17. This Court shall retain jurisdiction over this Consent Decree for a period of three (3) years from the date of the Court's approval, after which AFCO's obligations under this Decree shall cease.

18. Any party may apply to the Court for modification, termination or enforcement of this Consent Decree. In the event of a dispute among the parties as to the meaning of or compliance with, any provision of this Consent Decree the parties shall make a good faith effort to resolve the matter before seeking the assistance of the Court.



19. Each of the undersigned certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of this Consent Decree and to legally bind the party or parties to it.

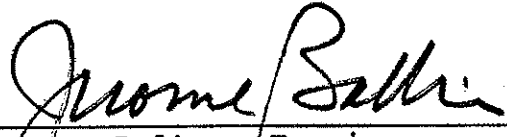
20. The parties represent that the Regional Office of the Environmental Protection Agency ("EPA") was provided with the sixty day notice forwarded to AFCO prior to the commencement of this action, and the EPA did not pursue an independent enforcement action against AFCO at that time. Though not required by EPCRA, the parties further represent that the EPA has been provided with a copy of this Consent Decree, and asked EPA to provide comments or objections within ten (10) days.

ALUMINUM FINISHERS CORP.

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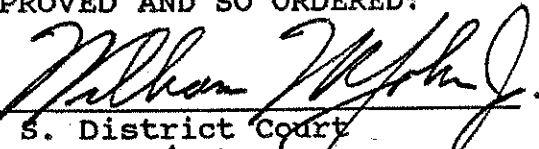
  
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For Defendants

  
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Jerome Balter, Esquire  
For Plaintiffs

APPROVED AND SO ORDERED:

  
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U. S. District Court

Date: 3/3/93

ENTERED: 3-5-93

CLERK OF COURT