

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

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ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST A HEARING
HEARING CLERK

IN THE MATTER OF:

MFG Chemical, Inc.
1200 Brooks Road
Dalton, GA 30719

Respondent.

Proceeding to Assess Class II
Civil Penalty under Section
311 of the Clean Water Act
for Spill Violation

Docket No. CWA-04-2008-5192

STATUTORY AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 4, who in turn has delegated it to the Director, RCRA Division, EPA, Region 4 ("Complainant").

2. Pursuant to Section 311(b)(6)(B)(ii) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22 ("Part 22"), Complainant hereby provides notice of its proposal that the Administrator assess a civil penalty against MFG Chemical, Inc., ("Respondent") for the discharge of a hazardous substance into or upon the navigable waters of the United States or adjoining shorelines in a quantity that has been determined may be harmful, in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty assessment.

ALLEGATIONS

3. Respondent is a corporation organized under the laws of Georgia with a place of business located at 1200 Brooks Road, Dalton, Georgia. The Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

4. The Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a facility primarily engaged in manufacturing specialty surfactants (wetting agents) for use in the textile industry; chemicals for the household, industrial & institutional market; and chemicals for the coatings industries, located at 1200 Brook Place, in Dalton, Georgia ("the facility").

5. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

6. Stacey Branch and Drowning Bear Creek are navigable waters of the United States as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and are therefore subject to the jurisdiction of Section 311 of the Act.

7. Section 311(b)(3) of the Act prohibits the discharge of hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

8. For purposes of Sections 311(b)(3) and (b)(4) of the Act, discharges of hazardous substances into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or the environment of the United

States are discharges of hazardous substances identified in 40 C.F.R. Part 116 in excess of the corresponding quantities listed in 40 C.F.R. Part 117.

9. On April 12, 2004, Respondent discharged 3,348 pounds of allyl alcohol, which is designated as a hazardous substance in 40 C.F.R. Part 116, from its facility into or upon the Stacy Branch and Drowning Bear Creek and their adjoining shorelines.

10. Respondent's discharge, as described in the preceding Paragraph, was in excess of the quantity of such substance established in 40 C.F.R. Part 117, which is 100 pounds.

Consequently, Respondent's discharge was in a quantity that has been determined may be harmful under 40 C.F.R. Part 117, which therefore violated Section 311(b)(3) of the Act.

11. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to a maximum of \$157,500.

PROPOSED PENALTY

Based on the forgoing Allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, the Complainant proposes that the Administrator, after considering the statutory penalty factors set forth at Section 311(b)(8) of the Act, issue a Final Order assessing administrative penalties against the Respondent in an amount not to exceed \$11,000 per day for each day during which the violation continues; except that the maximum amount shall not exceed \$157,500. The violation alleged in Paragraphs 9 and 10 represents a very serious violation of the Act because Stacy Branch and Drowning Bear Creek are part of the Conasauga River system which supports 90 species of fish, and 25 species of fresh

water mussels. The violation alleged in Paragraphs 9 and 10 continued for at least two weeks, and caused a fish kill of at least 3,144 fish within Stacy Branch and Drowning Bear Creek. The Conasauga River system is a sensitive eco-system because 24 of the aquatic species that inhabit this river system are rare and imperiled animals, including 12 species listed under the U.S. Endangered Species Act.

ANSWER AND OPPORTUNITY TO REQUEST HEARING

Default constitutes an admission of all facts alleged in this Complaint and a waiver of Respondent's right to a hearing on such factual allegations. In order to avoid default in this matter, Respondent must within 30 days after receipt of this Complaint either settle this matter with the Complainant, or file both an original and one copy of a written Answer to this Complaint with:

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

Respondent is also required to provide a contemporaneous copy of any Answer to the Complainant.

Pursuant to 40 C.F.R. § 22.15, Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondent has knowledge. If Respondent states in its Answer that it has no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, Respondent's

failure to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. Respondent's Answer shall also state the circumstances or arguments for any defense Respondent wishes to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the Complainant's proposed penalty.

Respondent may, pursuant to Section 311(b)(6) of the Act and 40 C.F.R § 22.15(c), request a hearing on the proposed penalty assessment in its Answer to this Complaint. Even if Respondent does not explicitly request a hearing in its Answer, the Presiding Officer may hold such a hearing if Respondent's Answer raises issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set out in 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

Following receipt of Respondent's Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his/her assignment, and shall notify the parties of the time and place of further proceedings in the case.

PUBLIC NOTICE

Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Final Order assessing administrative penalties against Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under Section 311(b)(6)(C) of the Act to be heard and present evidence at the hearing.

INFORMAL CONFERENCE

Respondent may request an informal conference with the Complainant's representative concerning the alleged violations, the amount of the proposed penalty, and settlement possibility. A request for an informal conference does not extend any deadline in this proceeding, including the deadline by which Respondent must submit an Answer to this Complaint.

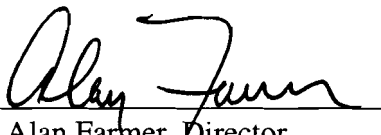
SERVICE OF DOCUMENTS

A copy of any document that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Joan Redleaf Durbin
Associate Regional Counsel
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center,
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9544
Redleaf-Durbin.Joan@epa.gov

If Respondent has any questions concerning the settlement process, or wishes to arrange for an informal conference, please contact Joan Redleaf Durbin at (404) 562-9544.

Date: 12/11/07



G. Alan Farmer, Director
RCRA Division
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center,
61 Forsyth Street, SW
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the original and one copy of the foregoing Complaint, in the Matter of MFG Chemical, Inc., Docket No. CWA-04-2008-5192, on the following in the manner indicated below:

Ms. Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

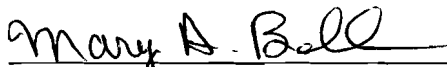
Via Hand Delivery

I hereby certify that I have this day served a true and correct copy of the foregoing Complaint, in the Matter of MFG Chemical, Inc., Docket No. CWA-04-2007-5189, on the following in the manner indicated below:

Charles E. Gavin, IV, President
MFG Chemical, Inc.
1200 Brooks Road
Dalton, GA 30719

Via Certified Mail,
Return Receipt Requested

Dated this 21 day of December, 2007.



Mary A. Bell
Legal Assistant
US EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
404-562-9508