

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
Hospital Laundry Services)
45 West Hintz Road)
Wheeling, Illinois)
)
)
Respondent.)
_____)

Docket No. EPCRA-05-2007-0022

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EPCRA-05-2007-0022
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ADMINISTRATIVE COMPLAINT

1. This is an administrative proceeding to assess a civil penalty under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), brought before the United States Environmental Protection Agency (U.S. EPA) Administrator (the Administrator).

2. The Branch Chief, Emergency Response Branch1, Superfund Division, Region 5, U.S. EPA, by lawful delegation is the Complainant.

3. The Respondent is Hospital Laundry Services, a corporation, doing business in the State of Illinois.

STATUTORY AND REGULATORY BACKGROUND

4. Section 312(a)(1) of EPCRA, 42 U.S.C. § 11022(a)(1), provides that the owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. § 651 et seq.] (“OSHA”), and regulations promulgated under that Act, shall prepare an emergency and hazardous chemical inventory form and submit it to each of the following:

- (a) the appropriate local emergency planning committee;
- (b) the State emergency response commission; and
- (c) the fire department with jurisdiction over the facility.

5. Section 312(a)(2) of EPCRA, 42 U.S.C. § 11022(a)(2), provides that the inventory form required was to be initially submitted on or before March 1, 1988, and an inventory form submitted each year thereafter, on March 1, containing data with respect to the preceding calendar year.

6. Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), provides that the Administrator may establish quantity thresholds for hazardous chemicals covered by Section 312 of EPCRA, 42 U.S.C. § 11022, below which no facility shall be subject to the provisions of this section.

7. Section 312(c) of EPCRA, 42 U.S.C. § 11022(c), provides that a hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under Section 311 of EPCRA, 42 U.S.C. § 11021.

8. Section 311(a)(1) of EPCRA, 42 U.S.C. § 11021(a)(1), provides that the owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the OSHA, and regulations promulgated under that Act, shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in Section 311(a)(2) of EPCRA, 42 U.S.C. § 11021, to the public entities identified in Paragraph 4, herein.

9. On May 28, 1974, the Secretary of Labor (“the Secretary”), under authority of Section 6 of OSHA, 29 U.S.C. § 655, republished Occupational Safety and Health Standards, codified at 29 CFR Part 1910. 39 Fed. Reg. 23502 (May 28, 1974).

10. The Secretary provides that employers shall have a material safety data sheet in the workplace for each hazardous chemical which they use. 29 CFR 1910.1200(g)(1).

11. The Secretary provides that the chemical manufacturer, importer or employer evaluating chemicals shall treat the following source as establishing that the chemicals listed in the source are hazardous: 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, OSHA. 29 CFR 1910.1200(d)(3).

12. That at 29 CFR 1910, subpart Z, Table Z-1--Limits for Air Contaminants, the Secretary designates sulfuric acid (CAS No. 7664-93-9) a hazardous chemical.

13. On October 15, 1987, the Administrator, under authority of EPCRA, published regulations addressing Hazardous Chemical Reporting: Community Right to Know, which are codified at 40 CFR Part 370. 52 Fed. Reg. 38364 (October 15, 1987).

14. The Administrator provides that the minimum threshold for reporting for extremely hazardous substances is 500 pounds (or 227 kgs-approximately 55 gallons) or the TPQ, whichever is lower. 40 CFR 370.20(b)(1).

15. The Administrator provides that an “extremely hazardous substance” means a substance listed in the appendices to 40 CFR part 355, Emergency Planning and Notification. 40 CFR 370.1.

16. That at 40 CFR 355, Appendix A--The List of Extremely Hazardous Substances and Their Threshold Planning Quantities, the Administrator identifies sulfuric acid (CAS No. 7664-93-9).

17. The Administrator provides that an owner or operator of a facility subject to 40 CFR Part 370, Subpart B (40 CFR 370.20 - 370.28), on or before March 1 of each year, beginning in 1988, shall submit to the commission, the committee, and the fire department with jurisdiction over the facility, an inventory form which contains information on hazardous chemicals present at the facility, during the preceding calendar year, above the threshold levels established in 40 CFR 370.20(b). 40 CFR 370.25(a).

18. The Administrator provides that owners or operators subject to 40 C.F.R. Part 370, Subpart B, shall cover in submitted inventory forms all hazardous chemicals present at the regulated facility at any one time during the preceding calendar year in amounts equal to or greater than their thresholds. 40 C.F.R. § 370.20(d).

GENERAL ALLEGATIONS

19. That Respondent is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

20. That at all times relevant to this Complaint, prior to February 2003, Respondent conducted a business operation in and about building(s) located at Chicago Avenue and Pulaski Road, in Chicago, Illinois, and at a West Addison Street location in Chicago, Cook County, Illinois.

21. That at all time relevant to this Complaint, subsequent to February 2003, Respondent conducted a business operation in and about a building(s), located at 45 West Hintz Road, Wheeling, Cook County, Illinois.

22. That the sites where Respondent has conducted its business were each a “facility,” as that term is defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

23. That, in conducting its business operation, as described in Paragraph 20 and 21, during the 2003, 2004 and 2005 calendar years, Respondent used sulfuric acid (CAS No. 7664-93-9).

24. That at all times relevant to this Complaint, Respondent was required, under 29 CFR 1910.1200(g)1), to have at its place of business a material safety data sheet for sulfuric acid (CAS No. 7664-93-9).

25. That at all times relevant to this Complaint, Respondent had at its place of business a material safety data sheet for sulfuric acid (CAS No. 7664-93-9).

26. That during the course of each of the calendar years 2003, 2004 and 2005, on at least one occasion, sulfuric acid was present at Respondent’s place of business, identified at Paragraphs 20 and 21, in an amount above 500 pounds.

27. That at all times relevant to this Complaint, the Illinois State Emergency Response Commission was the state emergency response commission (“SERC”) for Illinois, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

28. That at all times relevant to this Complaint, the Cook County Local Emergency Planning Committee (“LEPC”) was the local emergency planning committee for Cook County, Illinois, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(b).

29. That at all times relevant to this Complaint, the Chicago Fire Department and the Wheeling, Illinois, Fire Department, respectively, were the fire departments with jurisdiction over the sites at which Respondent conducted its business operations, as identified at Paragraphs 20 and 21, under Section 301(a) of EPCRA, 42 U.S.C. § 11011(a).

VIOLATIONS ALLEGED

Count I

Failure to Submit Emergency and Hazardous Chemical Inventory Form

30. That Paragraphs 1 through 29 are hereby incorporated by reference.

31. That Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), required that Respondent, no later than March 1, 2004, file with the SERC, the LEPC and the local fire department, an emergency and hazardous chemical inventory form for sulfuric acid for calendar year 2003.

32. That, as of June 13, 2006, Respondent had not submitted to the SERC, the LEPC and the local fire department, an emergency and hazardous chemical inventory form for sulfuric acid for calendar year 2003.

33. That in failing to timely submit to the SERC, the LEPC and the local fire department, an emergency and hazardous chemical inventory form for sulfuric acid, as alleged in Paragraph 32, Respondent violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and, consequently, is liable for civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

Count II

Failure to Submit Emergency and Hazardous Chemical Inventory Form

34. That Paragraphs 1 through 33 are hereby incorporated by reference.

35. That Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), required that Respondent,

no later than March 1, 2005, file with the SERC, the LEPC and the local fire department, an emergency and hazardous chemical inventory form for sulfuric acid for calendar year 2004.

36. That, as of June 13, 2006, Respondent had not submitted to the SERC, the LEPC and the local fire department, an emergency and hazardous chemical inventory form for sulfuric acid for calendar year 2004.

37. That in failing to timely submit to the SERC, the LEPC and the local fire department, an emergency and hazardous chemical inventory form for sulfuric acid, as alleged in Paragraph 36, Respondent violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and, consequently, is liable for civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

Count III

Failure to Submit Emergency and Hazardous Chemical Inventory Form

38. That Paragraphs 1 through 37 are hereby incorporated by reference.

39. That Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), required that Respondent, no later than March 1, 2006, file with the SERC, the LEPC and the local fire department, an emergency and hazardous chemical inventory form for sulfuric acid for calendar year 2005.

40. That Respondent did not submit to the SERC an emergency and hazardous chemical inventory form for sulfuric acid for calendar year 2005 until June 28, 2006.

41. That in failing to timely submit to the SERC an emergency and hazardous chemical inventory form for sulfuric acid, as alleged in Paragraph 40, Respondent violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and, consequently, is liable for civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

Count IV**Failure to Submit Emergency and Hazardous Chemical Inventory Form**

42. That Paragraphs 1 through 41 are hereby incorporated by reference.

43. That Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), required that Respondent, no later than March 1, 2006, file with the SERC, the LEPC and the local fire department, an emergency and hazardous chemical inventory form for sulfuric acid for calendar year 2005.

44. That Respondent did not submit to the LEPC an emergency and hazardous chemical inventory form for sulfuric acid for calendar year 2005 until June 8, 2006.

45. That in failing to timely submit to the LEPC an emergency and hazardous chemical inventory form for sulfuric acid, as alleged in Paragraph 44, Respondent violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and, consequently, is liable for civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

Count V**Failure to Submit Emergency and Hazardous Chemical Inventory Form**

46. That Paragraphs 1 through 45 are hereby incorporated by reference.

47. That Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), required that Respondent, no later than March 1, 2006, file with the SERC, the LEPC and the local fire department, an emergency and hazardous chemical inventory form for sulfuric acid for calendar year 2005.

48. That Respondent did not submit to the local fire department an emergency and hazardous chemical inventory form for sulfuric acid for calendar year 2005 until June 8, 2006.

49. That in failing to timely submit to the local fire department an emergency and hazardous chemical inventory form for sulfuric acid, as alleged in Paragraph 48, Respondent

violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and, consequently, is liable for civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

PROPOSED PENALTY

In Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), Congress provides that any person who violates any requirement of Section 312 of EPCRA, 42 U.S.C. § 11022, shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. In Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), Congress provides that the Administrator may assess any civil penalty for which a person is liable under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), by administrative order.

The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 CFR Part 19, increased the statutory maximum penalty for each violation of Section 312 of EPCRA, 42 U.S.C. § 11022, occurring from January 31, 1997, through March 15, 2004, to \$27,500, and for each violation of that section occurring after March 15, 2004, to \$32,500.

In determining the proposed penalty for the EPCRA Section 312 violations alleged in this Complaint, the Administrator's Delegated Complainant considered the Administrator's "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (dated September 30, 1999)," a copy of which is enclosed with this Complaint. Based upon an evaluation of the facts alleged in this Complaint and other evidence relevant to this enforcement action, and considering the penalty factors identified in the

Administrator’s Policy, **Complainant proposes that the Administrator assess a civil penalty against Respondent of \$63,450, as follows:**

Count I	EPCRA Section 312(a)		\$ 1,500
Count II	EPCRA Section 312(a)		\$ 1,500
Count III	EPCRA Section 312(a)	(SERC)	\$20,150
Count IV	EPCRA Section 312(a)	(LEPC)	\$20,150
Count V	EPCRA Section 312(a)	(FIRE DEPT)	\$20,150

			\$63,450

In considering Respondent’s “ability to pay” the proposed \$63,450 penalty, consistent with the Administrator’s Policy and his published decisions, Complainant has presumed that Respondent does have an ability to pay the penalty amount. However, should Respondent in its Answer claim that it does not have an “ability to pay” the penalty amount proposed, and make available to Complainant relevant and credible financial records which demonstrate that it does not have an ability to pay the amount of penalty proposed, Complainant will set aside the presumption and reduce the amount of penalty proposed, consistent with what is revealed in Respondent’s financial records. Likewise, should Respondent provide Complainant credible information relevant to any other issue regarding the appropriate amount of penalty, on review of that information Complainant will amend the amount of penalty proposed if, and as, warranted.

PAYMENT OF THE PROPOSED CIVIL PENALTY

Respondents may pay the civil penalty amount proposed by submitting a certified or cashier's check, payable to “Treasurer, the United States of America,” to the following address:

U.S. Environmental Protection Agency, Region 5
ATTN: Finance
P.O. Box 371531
Pittsburgh, PA 15251-7531

The words "Hospital Laundry Services" and the docket number appearing on the first page of this Complaint must be written on the face of the check.

A transmittal letter bearing Respondents' name and the docket number of this Complaint shall accompany the remittance of the check. Copies of the transmittal letter and check shall also be sent to the following addressees:

Regional Hearing Clerk (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

James Entzminger
Chemical Emergency Preparedness
and Prevention Section (SC-6J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Richard R. Wagner, Senior Attorney
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

You have the right to request a hearing to challenge the facts alleged in the Complaint and the amount of civil penalty to be assessed, as proposed in the Complaint.

Any pre-hearing matter and hearing that may occur will be governed in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the

"Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 CFR Part 22 (July 1, 2003) (the Administrator's Rules). A copy of the Administrator's Rules is provided with this Complaint.

If you wish to avoid being found in default, you must file a written Answer to the Complaint with the Regional Hearing Clerk (R-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) days of your receipt service of this Complaint. 40 CFR 22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or Federal legal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. 40 CFR 22.7(a).

Rules of the Administrator govern your response to this Complaint. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which you have any knowledge, or, where you have no knowledge of a particular factual allegation, so state. 40 CFR 22.15(b). Your Answer must also state:

1. **The circumstances or arguments that you allege constitute the grounds of defense;**
2. **The facts that you dispute;**
3. **The basis on which you dispute the proposed relief, that being the amount of penalty proposed; and**
4. **Whether you request a hearing.**

40 CFR 22.15(b).

Your failure to admit, deny or explain any material factual allegation in the Compliant will constitute an admission of the allegation. 40 CFR 22.15(d). You should further note that the Administrator's Rules provide that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer." 40 CFR 22.15(c).

A copy of the Answer, and any subsequent documents filed by you in this action, should be sent to Richard R. Wagner, Senior Attorney, Office of Regional Counsel (C-14J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Mr. Wagner may be telephoned at (312) 886-7947.

Notwithstanding any request you may make for a hearing, if you fail to file an answer within thirty (30) days of your receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. 40 CFR 22.15(a); 40 CFR 22.17. Issuance of this Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your right to a hearing on those factual allegations. Any civil penalty determined appropriate in the Default Order shall then become due and payable, without further proceedings, on becoming a final order under 40 CFR 22.27(c). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. U.S. EPA will impose a late payment handling charge of \$15.00 after thirty (30) days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six (6) percent per annum penalty on any principal amount not paid within

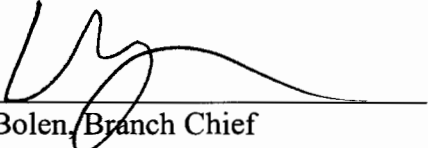
ninety (90) days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may request an informal conference with the U.S. EPA, Region 5 to discuss the facts of this case and possibly to achieve a settlement without formal litigation. To request such a settlement conference, you should contact Richard R. Wagner, Senior Attorney as indicated above.

Your request for an informal settlement conference does not extend the 30-day period during which a written Answer and a request for a hearing must be submitted. However, you may pursue the informal settlement conference procedure simultaneously with the adjudicatory hearing procedure.

The U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. However, the U.S. EPA will not reduce the proposed penalty simply because the parties hold such a conference. Any settlement that the parties may reach as a result of a settlement conference shall be embodied in a written and fully executed Consent Agreement and Final Order (CAFO), filed with the Region 5 Hearing Clerk. The issuance of such a CAFO shall constitute a waiver of Respondents' right to request a hearing on any matter stipulated to in the CAFO.



William J. Bolen, Branch Chief
Emergency Response Branch 1
Superfund Division
U.S. Environmental Protection Agency, Region 5

8/17/07

Date

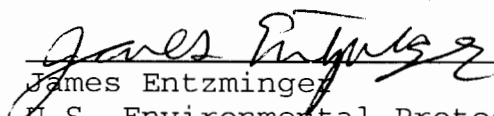
EPCRA-05-2007-0022

Certificate of Service

I, James Entzminger, certify that I filed the original and one copy of the Administrative Complaint, docket number EPCRA-05-2007-0022 with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a copy to the Respondent by first-class, postage prepaid, certified mail, return receipt requested, along with the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, and the Enforcement Response Policy, by placing them in the custody of the United States Postal Service addressed as follows:

Donald Pedder, CEO
Hospital Laundry Services
45 West Hintz Road
Wheeling, IL 60090-6073

on the 29 day of May, 2006.



James Entzminger
U.S. Environmental Protection Agency
Region 5

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MAIL ROOM