



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

MAY 22 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ACH Food Companies
710 North Mattis Avenue
Champaign, IL 61821

Re: In the Matter of ACH Food Companies
Docket No: **CERCLA-05-2008-0008 EPCRA-05-2008-0013 MM-05-2008-0003**

Dear Sir or Madam:

I have enclosed a Complaint filed against ACH Food Companies, under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2). The Complaint alleges violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304(a) of EPCRA, 42 U.S.C. §§ 11004(a).

As provided in the Complaint, if you would like to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this Complaint, the Presiding Officer may issue a default order and the proposed civil penalty will become due 30 days later. Mail your answer to Thomas Kenney, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

In addition, whether or not you request a hearing, you may request an informal settlement conference by contacting Ginger Jager at (312) 886-0767. If you have any legal questions, please contact Thomas Kenney, Associate Regional Counsel at (312) 886-0708.

Sincerely yours,

Linda M. Nachowicz, Chief
Emergency Response Branch 2

Enclosures (3) Administrative Complaint

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

ACH Food Companies, Inc.
710 North Mattis Avenue
Champaign, IL 61821

Respondent.

(**Docket No(s) CERCLA-05-2008-0008 EPCRA-05-2008-0013**
(
(**Proceeding to Assess a Civil Penalty MM-05-2008-0003**
(**under Section 109(b) of the**
(**Comprehensive Environmental**
(**Response, Compensation, and Liability**
(**Act, and 325(b)(2) and 325(c) of the**
(**Emergency Planning and Community**
(**Right-to-Know Act of 1986.**

Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Section(s) 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2).

2. The Complainant is, by lawful delegation, the Branch Chief, Emergency Response Branch, Superfund Division, Region 5, United State Environmental Protection Agency (U.S. EPA).

3. The Respondent is ACH Food Companies, Inc. a corporation doing business in Illinois.

Statutory and Regulatory Background

4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

5. Section 304(a)(1) of EPCRA, 42 U.S.C. §§ 11004(a)(1), requires that the owner of operator of a facility must immediately provide notice, as described in Section 304(b) of

EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

6. Section 304(a)(2) of EPCRA, 42 U.S.C. § 11004(b), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release occurred in a manner which would require notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

7. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency planning commission (SERC) of any state likely to be affected by a release.

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

General Allegations

9. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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

11. At all times relevant to this Complaint, Respondent was an owner or operator of the Facility located at 710 North Mattis Avenue, Champaign, Illinois, 61821 (Facility).

12. At all time relevant to this Complaint, Respondent was in charge of the Facility.

13. Respondent's Facility consists of a building, structure, equipment, pipe or pipeline, well, pit, or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

14. Respondent's Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

15. 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.

16. Respondent's Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

17. Ammonia, CAS # 7664-41-7 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

18. Ammonia, CAS # 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

19. Ammonia is listed under OSHA regulations at 29 C.F.R. § 1910, subpart Z, § 1910.1000, Table Z-1.

20. At all times relevant to this Complaint, ammonia was produced, used or stored at the Facility.

21. Ammonia, CAS # 7664-41-7 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

22. Ammonia, CAS # 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

23. On September 28, 2005, at or about 11:30 a.m., a release occurred from Respondent's Facility of approximately 725 pounds of ammonia. (the Release)

24. In a 24 hour time period, the release of ammonia exceeded 100 pounds.

25. During the release approximately 725 pounds of ammonia escaped into the air.

26. The release is a "Release" as that term is defined under Section 101(22) of CERCLA 42 U.S.C. § 9601(22).

27. The release is a "release" as that term is defined under Section 329(8) of EPCRA 42 U.S.C. § 11049(8).

28. Respondent had knowledge of the release on September 28, 2005, at approximately 11:57 a.m.

29. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

30. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

31. The release was likely to affect Illinois.

32. At all times relevant to this Complaint, the Illinois Emergency Management Agency was the state emergency response commission (SERC) for Illinois, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

33. The release was likely to affect Champaign County.

34. At all times relevant to this Complaint, the Champaign County Local Emergency Planning Committee was the local emergency planning committee (LEPC) for Champaign County, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

Count 1

36. Complainant incorporates paragraphs 1 through 34 of this Complaint as it is set forth in this paragraph.

37. Respondent notified the NRC of the release on September 28, 2005, at 3:05 p.m.

38. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

39. Each day Respondent failed to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 2

40. Complainant incorporates paragraphs 1 through 34 of this Complaint as it is set forth in this paragraph.

41. Respondent notified the SERC of the release on September 28, 2005, at 2:55 p.m.

42. Respondent did not immediately notify the SERC as soon as Respondent had knowledge of the release.

43. Each day Respondent failed to notify immediately the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 3

44. Complainant incorporates paragraphs 1 through 34 of this Complaint as it is set forth in this paragraph.

45. Respondent notified the LEPC of the release on September 28, 2005, at 3:10 p.m.

46. Respondent did not immediately notify the LEPC as soon as Respondent had knowledge of the release.

47. Each day Respondent failed to notify immediately the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Proposed CERCLA Penalty

48. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the U.S. EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties 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.

49. Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), requires the Administrator of U.S. EPA to consider the nature, circumstances, extent and gravity of the violations, a violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and any other matters that justice requires, when assessing an administrative penalty under Section 109(b) of CERCLA.

50. Based upon an evaluation of the facts alleged in this Complaint and the factors in Section 109(a)(3) of CERCLA, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$24,179 for the CERCLA violations alleged in Count 1 of this Complaint.

51. Complainant calculated the CERCLA penalties by evaluating the facts and circumstances of this case with specific reference to U.S. EPA'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.

Proposed EPCRA Penalty

52. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b) authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation for each EPCRA Section 304 violation that occurred before January 31, 1997. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties 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.

53. Based upon an evaluation of the facts alleged in this Complaint, and after considering the nature, circumstances, extent and gravity of the violations, degree of culpability, economic benefit or savings resulting from the violations, and any other matters that justice requires, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$48,358 for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various EPCRA counts of this Complaint as follows:

Count 2	EPCRA Section 304(a) (SERC):	\$24,179
Count 3	EPCRA Section 304(a) (LEPC):	\$24,179

54. Complainant calculated the EPCRA penalties by evaluating the facts and circumstances of this case with specific reference to U.S. EPA's "Enforcement Response Policy for Sections 302, 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.

Rules Governing this Proceeding

55. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

56. Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

57. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Thomas Kenney to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Thomas Kenney at (312) 886-0708. His address is:

Thomas Kenney (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Terms of Payment

58. Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check for the CERCLA violation payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

and by sending a certified or cashier's check for the EPCRA violations payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fine and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

59. Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and Thomas Kenney at the addresses given above, and to:

Ginger Jager, (SC-6J)
Office of Chemical Emergency
Preparedness and Prevention
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact alleged in this Complaint or the appropriateness

of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and,
- d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of

the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Ginger Jager at (312) 886-0767.

Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through informal conference. However, Complainant will not reduce the penalty simply because the parties hold an informal settlement conference.

U.S. Environmental Protection Agency, Complainant

May 22, 2008
Date

Mark J. Henitz, Jr.
Linda M. Nachowicz, Chief
Emergency Response Branch 2
Superfund Division

In the Matter of:
ACH Food Companies, Inc.
Docket No. CERCLA-05-2008-0008 EPCRA-05-2008-0013

MM-05-2008-0003

In the Matter of:
ACH Food Companies, Inc.

Docket No. CERCLA-05-2008-0008 EPCRA-05-2008-0013

MM-05-2008-0003

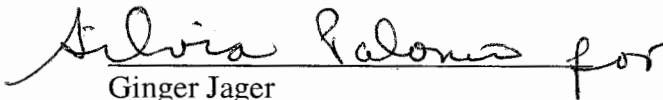
Certificate of Service

I, Ginger Jager, certify that I filed the original and one copy of the Complaint,
docket numbers CERCLA-05-2008-0008 EPCRA-05-2008-0013 MM-05-2008-0003

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 the Administrative Assessment of Civil Penalties 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:

ACH Food Companies, Inc.
710 North Mattis Avenue
Champaign, IL 61821

On the 22nd day of May, 2008.


Ginger Jager
U.S. Environmental Protection Agency
Region 5

2008 MAY 22 PM 12:25
REGIONAL HEARING CLERK
US EPA