



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

JUN 25 2009

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0189 5011

Mr. James W. Hawkins
President
Kenall Manufacturing Company
940 Lakeside Drive
Gurnee, Illinois 60031

Re: In the Matter of the Kenall Manufacturing Company, d/b/a Subtronics Assembly Corporation, Gurnee, Illinois; Docket No. **EPCRA-05-2009-0021**

Dear Mr. Hawkins:

I have enclosed a civil administrative Complaint filed by the U.S. Environmental Protection Agency, Region 5 against Kenall Manufacturing Company, doing business as Subtronics Assembly Corporation, Gurnee, Illinois for alleged violations of Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c).

As provided in the Complaint, if you wish 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 (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604 within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference or if you have any questions about this matter, please contact Terence Bonace, Enforcement Officer, at (312) 886-3387, or John P. Steketee, Associate Regional Counsel, at (312) 886-0558.

Sincerely,


Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2009-0021
)	
Kenall Manufacturing Company)	Proceeding to Assess a Civil Penalty
d/b/a Subtronics Assembly Corporation)	Under Section 325(c) of the Emergency
Gurnee, Illinois,)	Planning and Community Right-to-Know
)	Act of 1986, 42 U.S.C. § 11045(c)
Respondent.)	
<hr style="border: 0.5px solid black;"/>		

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JUN 29 2009

Complaint

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action to assess a civil penalty under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c).

2. Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Kenall Manufacturing Company, doing business as Subtronics Assembly Corporation, Gurnee, Illinois, a corporation incorporated in the State of Illinois.

Statutory and Regulatory Background

4. EPA promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rule at 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048.

5. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees, a Standard Industrial Classification (SIC) 3672 and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) and listed at 40 C.F.R.

§ 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f) and in 40 C.F.R. §§ 372.25, 372.27 and 372.28.

6. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to complete and submit to the Administrator of EPA and to the state in which the facility is located, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f).

7. EPA published the Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R. § 372.85 pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g).

8. All persons required to report pursuant to Section 313(b) must use Form R according to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

9. The Administrator of EPA may prescribe regulations as may be necessary to carry out EPCRA. 42 U.S.C. § 11048.

10. Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$32,500 per day for each violation of

Section 313 that occurred after March 15, 2004 through January 12, 2009, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

General Allegations

11. Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

12. Respondent is a corporation doing business in the State of Illinois.

13. Respondent owned or operated a facility located at 940 Lakeside Drive, Gurnee, Illinois during the calendar years 2003 and 2006.

14. Respondent’s facility consists of buildings, equipment and structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned by the same person, entity, or corporation.

15. During the calendar years 2003 and 2006, Respondent employed at its facility the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.

16. Respondent’s facility is covered by SIC 3672.

17. During the calendar years 2003 and 2006, Respondent “processed,” as defined by 40 C.F.R. § 372.3, toxic chemicals identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65, in quantities exceeding the thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.28.

18. On May 5, 2005, a representative of EPA inspected Respondent’s facility.

Count I

19. Complainant incorporates paragraphs 1 through 18 of this Complaint as if set forth in this paragraph.

20. The reporting threshold for lead that is processed during the 2003 calendar year is 100 lbs. 42 U.S.C. § 11023(f) and 40 C.F.R. 372.28.

21. During the 2003 calendar year, Respondent's facility processed 800 lbs. of lead, CAS. No. 7439-92-1.

22. Lead is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 371.65.

23. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Illinois a Form R for lead for the 2003 calendar year on or before July 1, 2004.

24. Respondent failed to submit to the Administrator of EPA and to Illinois a Form R for lead for the 2003 calendar year on or before July 1, 2004.

25. On June 22, 2005, Respondent submitted to the Administrator of EPA a Form R for lead for the 2003 calendar year.

26. Respondent's failure to submit timely to the Administrator of EPA a Form R for lead for the 2003 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count II

27. Complainant incorporates paragraphs 1 through 18 of this Complaint as if set forth in this paragraph.

28. The reporting threshold for lead that is processed during the 2003 calendar year is 100 lbs. 42 U.S.C. § 11023(f) and 40 C.F.R. 372.28.

29. During the 2006 calendar year, Respondent's facility processed 579 lbs. of lead, CAS. No. 7439-92-1.

30. Lead is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 371.65.

31. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Illinois a Form R for lead for the 2006 calendar year on or before July 1, 2007.

32. Respondent failed to submit to the Administrator of EPA and to Illinois a Form R for lead for the 2006 calendar year on or before July 1, 2007.

33. On July 8, 2008, Respondent submitted to the Administrator of EPA a Form R for lead for the 2006 calendar year.

34. Respondent's failure to submit timely to the Administrator of EPA a Form R for lead for the 2006 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Proposed Penalty

35. Complainant proposes that the Administrator assess a civil penalty against Respondent for the EPCRA violations alleged in this Complaint as follows:

Count I

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for lead for calendar year 2003:

CAS No. 7439-92-1\$6,321

Count II

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for lead for calendar year 2006:

CAS No. 7439-92-1\$6,448

Total Proposed Civil Penalty.....\$12,769

Complainant has determined the proposed civil penalty according to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). In determining the proposed penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)[Amended]*, dated April 12, 2001, a copy of which is enclosed with this Complaint.

Rules Governing this Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), 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

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 West Jackson Boulevard
Chicago, Illinois 60604

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 John P. Steketee, Associate Regional counsel to receive any answer and subsequent legal documents that

Respondent serves in this proceeding. You may telephone Mr. Steketeo at (312)886-0558. His address is:

John P. Steketeo (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Terms of Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must include the case name, docket number and the billing document 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 Mr. Steketeo at the addresses given above, and to:

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based 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 Mr. Bonace at (312) 886-3387.

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 both 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 an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

6/25/09
Date

Allen Nelson
Margaret M. Guerriero
Director
Land and Chemicals Division

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CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Complaint in resolution of the civil administrative action involving Kenall Manufacturing Company, was filed on June 29, 2009, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7001 0320 0006 0189 5011 along with a copy of the original to the Respondent:

Mr. James W. Hawkins
Kenall Manufacturing Company
940 Lakeside Drive
Gurnee, Illinois 60031

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
John P. Steketee, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. EPCRA-05-2009-0021

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