



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

RECEIVED

SEP 30 2010

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Office of Regional Hearing Clerk

BY HAND

September 30, 2010

Wanda Santiago, Regional Hearing Clerk
U.S. Environment Protection Agency, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

Re: In the Matter of BJ's Wholesale Club, Inc., Docket Number EPCRA-01-2010-0058

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of the Administrative Complaint and Notice of Opportunity for Hearing.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Wagner".

Michael Wagner
Senior Enforcement Counsel

Enclosure

cc: Laura J. Sen

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of:)
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)
BJ's Wholesale Club, Inc.)
869 Quaker Highway)
Uxbridge, MA)
)
)
Respondent.)
_____)

Docket No. EPCRA-01-2010-0058

**ADMINISTRATIVE COMPLAINT
AND
NOTICE OF
OPPORTUNITY FOR HEARING**

STATUTORY AND REGULATORY BASIS

This is a civil administrative action under the authority of Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter "EPCRA"), and the Consolidated Rules of Practice Governing the 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 ("Part 22"). Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1 ("Complainant"). This Complaint alleges that BJ's Wholesale Club, Inc. ("Respondent") violated Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), and the federal regulations that set out in greater detail these statutory requirements, 40 C.F.R. Part 370.

Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility which is required by the Occupational

GENERAL ALLEGATIONS AND STATEMENT OF FACTS

1. Respondent is a corporation incorporated under the laws of the State of Delaware and a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
2. Respondent owns and operates a distribution facility located at 869 Quaker Highway, Uxbridge, MA 01569 (the "facility"). The facility consists of buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, and that are owned or operated by the same person.
3. The facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.2.
4. On or about March 16, 2004, authorized representatives of EPA inspected Respondent's facility. The purpose of the inspection was to determine Respondent's compliance with EPCRA reporting requirements.
5. At all times relevant to the violations cited herein, Respondent was required, pursuant to OSHA and regulations promulgated thereunder, to prepare or have available a MSDS for sulfuric acid, lead, diesel fuel and other materials.
6. At all times relevant to the violations cited herein, Respondent stored lead and diesel fuel, which are "hazardous chemicals" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 1102(e), and as defined under 29 C.F.R. § 1910.1200(c), in a quantity that exceeds the minimum threshold level ("MTL") of 10,000 pounds set forth in 40 C.F.R. § 370.20(b)(4) at the facility.
7. At all times relevant to the violations cited herein, Respondent stored sulfuric acid, which is an "extremely hazardous chemical" within the meaning of Section 311(e) of

§ 370.20(b)(1).

15. Respondent was required to prepare and submit a Tier II form to the SERC, LEPC and the local fire department with jurisdiction over the facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for calendar year 2007 on or before March 1, 2008.

16. Respondent failed to prepare and submit a Tier II form by March 1, 2008 to the SERC, LEPC and the local fire department, in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.25.

17. Respondent is therefore subject to an assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19.

COUNT III

18. Complainant re-alleges paragraphs 1 through 17.

19. During calendar year 2006, Respondent stored lead and diesel fuel at the facility in a quantity that exceeds the MTL of 10,000 pounds set forth in 40 C.F.R. §§ 370.20(b)(4) and sulfuric acid in a quantity that exceeds the MTL of 500 pounds set forth in 40 C.F.R. § 370.20(b)(1).

20. Respondent was required to prepare and submit a Tier II form to the SERC, LEPC and the local fire department with jurisdiction over the facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for calendar year 2006 on or before March 1, 2007.

21. Respondent failed to prepare and submit a Tier II form by March 1, 2007 to the SERC, LEPC and the local fire department, in violation of the reporting requirements of Section

2009 and a penalty of \$32,500 per day for each violation of EPCRA Section 312, 42 U.S.C. § 11022, occurring after March 15, 2004 through January 12, 2009. Failure to report in a timely manner, as required by Sections 311 and 312, may deprive the community of its right to know about chemicals used or stored near or in the neighborhood that may affect public health and the environment, and may prevent comprehensive planning by federal, state and local authorities to properly prepare for accidental chemical releases.

29. The proposed civil penalty has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). For purposes of determining the amount of any penalty to be assessed, EPA considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Interim Final 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, as amended through April 6, 2010) ("ERP"), a copy of which is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

30. Pursuant to Part V of the ERP, the first stage of calculating a penalty requires the determination of the "extent" level of the violation and the second stage concerns the "gravity" level of the violation. Under the ERP, EPA has discretion to select an amount within the range

penalty of \$10,300. No adjustments pursuant to Section VII.F were made.

36. After consideration of the Respondent's failure to voluntarily disclose the violations, its lack of a history of prior violations, degree of culpability, and economic benefit, the Complainant proposes no further adjustments to the gravity-based penalty amounts for the Section violations.

37. The proposed penalty as stated in this Complaint was developed based on the best information available to the Agency at this time and may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

38. Based upon the violations cited in this Complaint, and taking into account the nature, circumstances and gravity of these violations, the Complainant proposes that Respondent be assessed a civil penalty in the amount of \$41,600 for the violations alleged in this Complaint. For each violation, the proposed penalty is as follows:

Count I	\$28,300
Count II.	\$ 1,500
Count III.	\$ 1,500
Count IV	\$10,300.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with Part 22, a copy of which is enclosed with this Complaint.

To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and having the above-cited penalty assessed

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with Len Wallace, Environmental Engineer in EPA Region 1's Office of Environmental Stewardship, (617) 918-1835, concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent's attorney is encouraged to contact Michael Wagner, Senior Enforcement Counsel, at (617) 918-1735, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

Please note that a request for an informal settlement conference does not enlarge the thirty-day period within which a written Answer must be submitted to avoid default.

Payment of the civil penalty alone does not satisfy Respondent's legal obligation to file complete and accurate emergency and hazardous chemical inventory forms (Tier I or Tier II forms). If Respondent chooses to remit the proposed penalty, it is still under a legal duty to submit complete and accurate Tier I or Tier II forms. Failure or refusal to file such forms may subject Respondent to additional civil penalties of up to \$37,500 per day of violation.

Michael Wagner, Senior Enforcement Counsel, at the above address and telephone, has been designated to represent Complainant and is authorized to receive service of process in this action.

Sept. 21, 2010
Date

Joanna Jerison
Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:)
)
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BJ's Wholesale Club, Inc.)
1 Mercer Road)
Natick, MA)
)
)
Respondent.)

Docket No. EPCRA-01-2010-0058

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and One Copy
(Hand-Delivered):

Wanda Santiago, Regional Hearing Clerk
U.S. Environment Protection Agency, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912.

Copy, including 40 C.F.R.
Part 22 and Section 312 ERP
(Certified Mail, Return Receipt
Requested):

Laura J. Sen
President and Chief Executive Officer
BJ's Wholesale Club, Inc.
1 Mercer Road
Natick, Massachusetts 01760

Dated: 9/30/2010



Michael Wagner
Enforcement Counsel (SEL)
U.S. Environment Protection Agency, Region I
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912.
Tel. (617) 918-1735
Fax (617) 918-0869