

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

06 JUN 26 PM 3:52

BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF) Docket No. EPCRA-07-2006-0223
)
Missouri Tie and Timber, Inc.) COMPLAINT AND NOTICE OF
Reynolds, Missouri 63666) OPPORTUNITY FOR HEARING
)
Respondent)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325 of the Emergency Planning and Community Right to Know Act of 1986 (hereinafter EPCRA), 42 U.S.C. § 11045.
2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter EPA or Complainant) has reason to believe that Respondent has violated Section 313 of EPCRA, 42 U.S.C. § 11023 and the regulations promulgated thereunder and codified at 40 C.F.R. Part 372, governing the submission of toxic chemical release inventories by owners and operators of covered facilities.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, the Regional Administrator, EPA, Region 7, and the Director, Air, RCRA, and Toxics Division, EPA, Region 7, is the Chief of the Chemical Risk Information Branch.
4. The Respondent is Missouri Tie and Timber, Inc., a manufacturer of wooden ties, incorporated and registered to do business in the State of Missouri, and located at Reynolds, Missouri 63666.

Statutory and Regulatory Requirements

5. Section 313 of EPCRA and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that: (a) has 10 or more full time employees; (b) has a Standard Industrial Classification (SIC) code of 20 through 39; and (c) that manufactured, processed, or otherwise used a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25, § 372.28 during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of EPA and to the State in which the subject facility is located by July 1 for the preceding calendar year for each toxic chemical known by the owner or

operator to be manufactured, processed, or otherwise used in quantities exceeding the established threshold quantity during that preceding calendar year.

6. As set forth in Section 313(f) of EPCRA and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years subsequent to and including 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years subsequent to and including 1987.

7. Notwithstanding the general reporting thresholds in 40 C.F.R. § 372.25, lower thresholds for reporting are established for chemicals of special concern pursuant to 40 C.F.R. § 372.28. Under this regulation, the reporting threshold amount for polycyclic aromatic compounds manufactured, processed, or otherwise used at a facility is 100 pounds for calendar years subsequent to and including 2000.

8. The reporting threshold amount for benzo(g,h,i)perylene manufactured, processed, or otherwise used at a facility is also subject to the special provisions of 40 C.F.R. § 372.28, which is 10 pounds for calendar years subsequent to and including 2000.

VIOLATIONS

The Complainant hereby states and alleges that Respondent has violated EPCRA and regulations thereunder as follows:

Count I

9. On or about March 25, 2004, an authorized EPA representative conducted an inspection to determine compliance with EPCRA Section 313 at Respondent's facility located at Highway 72 West, Reynolds, Missouri 63666 (Respondent's facility).

10. Respondent is a person as defined at Section 329(7) of EPCRA and is the owner or operator of a facility as defined at Section 329(4) of EPCRA.

11. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3, at Respondent's facility.

12. Respondent's facility has a SIC code beginning with 20 through 39.

13. The March 25, 2004 inspection, of Respondent's facility revealed that, in calendar year 2002, Respondent processed creosote in excess of 25,000 pounds.

14. Creosote is a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.

15. Respondent failed to submit a Form R for calendar year 2002, for creosote to the Administrator of EPA and to the State of Missouri by July 1, 2003.

16. Respondent's failure to submit a Form R for calendar year 2002, for creosote by July 1, 2003, is a violation of EPCRA Section 313, and of the requirements of 40 C.F.R. Part 372.

17. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 9 through 16 above, it is proposed that a civil penalty of \$18,700 be assessed against Respondent.

Count II

18. The facts stated in paragraphs 9 through 12, are herein restated and incorporated.

19. The March 25, 2004 inspection, of Respondent's facility revealed that, in calendar year 2002, Respondent processed polycyclic aromatic compounds in excess of 100 pounds.

20. Polycyclic aromatic compounds are a toxic chemical category listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.

21. Respondent failed to submit a Form R for calendar year 2002, for polycyclic aromatic compounds to the Administrator of EPA and to the State of Missouri by July 1, 2003.

22. Respondent's failure to submit a Form R for calendar year 2002, for polycyclic aromatic compounds by July 1, 2003, is a violation of EPCRA Section 313, and of the requirements of 40 C.F.R. Part 372.

23. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 18 through 22 above, it is proposed that a civil penalty of \$18,700 be assessed against Respondent.

Count III

24. The facts stated in paragraphs 9 through 12, are herein restated and incorporated.

25. The March 25, 2004 inspection, of Respondent's facility revealed that, in calendar year 2002, Respondent processed benzo(g,h,i)perylene in excess of 10 pounds.

26. Benzo(g,h,i)perylene is a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.

27. Respondent failed to submit a Form R for calendar year 2002, for benzo(g,h,i)perylene to the Administrator of EPA and to the State of Missouri by July 1, 2003.

28. Respondent's failure to submit a Form R for calendar year 2002, for benzo(g,h,i)perylene by July 1, 2003, is a violation of EPCRA Section 313, and of the requirements of 40 C.F.R. Part 372.

29. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 24 through 28 above, it is proposed that a civil penalty of \$18,700 be assessed against Respondent.

Count IV

30. The facts stated in paragraphs 9 through 12, are herein restated and incorporated.
31. The March 25, 2004 inspection, of Respondent's facility revealed that, in calendar year 2001, Respondent processed benzo(g,h,i)perylene in excess of 10 pounds.
32. Benzo(g,h,i)perylene is a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.
33. Respondent failed to submit a Form R for calendar year 2001, for benzo(g,h,i)perylene to the Administrator of EPA and to the State of Missouri by July 1, 2002.
34. Respondent's failure to submit a Form R for calendar year 2001, for benzo(g,h,i)perylene by July 1, 2002, is a violation of EPCRA Section 313, and of the requirements of 40 C.F.R. Part 372.
35. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 30 through 34 above, it is proposed that a civil penalty of \$18,700 be assessed against Respondent.

Count V

36. The facts stated in paragraphs 9 through 12, are herein restated and incorporated.
37. The March 25, 2004 inspection, of Respondent's facility revealed that, in calendar year 2000, Respondent processed creosote in excess of 25,000 pounds.
38. Creosote is a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.
39. Respondent failed to submit a Form R for calendar year 2000, for creosote to the Administrator of EPA and to the State of Missouri by July 1, 2001.
40. Respondent's failure to submit a Form R for calendar year 2000, for creosote by July 1, 2001, is a violation of EPCRA Section 313, and of the requirements of 40 C.F.R. Part 372.
41. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 36 through 40 above, it is proposed that a civil penalty of \$18,700 be assessed against Respondent.

Count VI

42. The facts stated in paragraphs 9 through 12, are herein restated and incorporated.
43. The March 25, 2004 inspection, of Respondent's facility revealed that, in calendar year 2000, Respondent processed polycyclic aromatic compounds in excess of 100 pounds.

44. Polycyclic aromatic compounds are a toxic chemical category listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.
45. Respondent failed to submit a Form R for calendar year 2000, for polycyclic aromatic compounds to the Administrator of EPA and to the State of Missouri by July 1, 2001.
46. Respondent's failure to submit a Form R for calendar year 2000, for polycyclic aromatic compounds by July 1, 2001, is a violation of EPCRA Section 313, and of the requirements of 40 C.F.R. Part 372.
47. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 42 through 46 above, it is proposed that a civil penalty of \$18,700 be assessed against Respondent.

Count VII

48. The facts stated in paragraphs 9 through 12, are herein restated and incorporated.
49. The March 25, 2004 inspection, of Respondent's facility revealed that, in calendar year 2000, Respondent processed benzo(g,h,i)perylene in excess of 10 pounds.
50. Benzo(g,h,i)perylene is a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.
51. Respondent failed to submit a Form R for calendar year 2000, for benzo(g,h,i)perylene to the Administrator of EPA and to the State of Missouri by July 1, 2001.
52. Respondent's failure to submit a Form R for calendar year 2000, for benzo(g,h,i)perylene by July 1, 2001, is a violation of EPCRA Section 313, and of the requirements of 40 C.F.R. Part 372.
53. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 48 through 52 above, it is proposed that a civil penalty of \$18,700 be assessed against Respondent.

Relief

54. Section 325(c) of EPCRA, authorizes a civil penalty of not more than \$25,000 for each violation of Section 313 of EPCRA. Under the Debt Collection Improvement Act of 1996 as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, penalties of up to \$27,500 for each violation of Section 313 of EPCRA may be assessed for violations that occur after January 30, 1997. The penalties proposed in paragraphs 17, 23, 29, 35, 41, 47 and 53, above, are based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above-cited violations, and with respect to the Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require in accordance with EPCRA and the Enforcement Response Policy

for Section 313 of EPCRA. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

55. The proposed penalties as set forth in this Complaint are based on the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the Respondent establishes bonafide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

56. A Summary of the Proposed Penalties is contained in the enclosed Penalty Calculation Summary attached hereto and incorporated herein by reference.

57. Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk.

Payment of the total penalty - \$130,900 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

EPA - Region 7
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

Checks should reference the name and docket number of the Complaint.

Note that payment of the proposed penalty alone does not satisfy Respondent's legal obligation to file complete and accurate reports as required by Section 313 of EPCRA and 40 C.F.R. Part 372. Failure or refusal to file said reports may subject Respondent to additional civil penalties.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

58. If Respondent pays the proposed penalty within thirty (30) days after receiving the Complaint, then no Answer need be filed.

59. Any Respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an Answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving the Complaint stating that Respondent agrees to pay the proposed penalty in accordance with Rule 22.18(a)(1) of 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, codified at 40 C.F.R. Part 22, (hereinafter "Consolidated Rules"). The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the penalty within sixty (60) days of

receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject the Respondent to default.

60. Respondent may request a hearing to contest any material fact contained in this Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules, a copy of which is enclosed herewith.

61. To avoid being found in default, which constitutes an admission of all facts alleged in this Complaint and a waiver of Respondent's right to contest such factual allegations, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent intends to place at issue; and (c) whether a hearing is requested.

62. Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations. The answer shall be filed with the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

63. If within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, Respondent fails to (1) submit full payment of the penalty; or (2) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty; or (3) file a written answer and request for a hearing; Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered unless the penalty is clearly inconsistent with the record of the proceeding or EPCRA.

Informal Settlement Conference

64. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

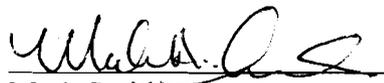
Belinda Holmes
Senior Assistant Regional Counsel
United States Environmental Protection Agency Region 7
901 North Fifth Street
Kansas City, Kansas 66101
Telephone (913)551-7714.

65. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

66. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement through an informal settlement conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

67. If Respondent has neither achieved a settlement by informal conference nor filed an answer within the thirty (30) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

Date 6/22/06



Mark Smith
Chief, Chemical Risk Information Branch
Air, RCRA, and Toxics Division



Belinda Holmes
Senior Assistant Regional Counsel
Office of Regional Counsel

Enclosures: Penalty Calculation Summary
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
Enforcement Response Policy For Section 313 of EPCRA including Updated Matrix

CERTIFICATE OF SERVICE

I certify that on the date noted below, I hand delivered the original and one true and correct copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Penalty Calculation Summary; a copy of 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; and a copy of the August 10, 1992, Enforcement Response Policy for Section 313 of EPCRA, to the following:

L. Dwayne Hackworth
Registered Agent for
Missouri Tie and Timber, Inc.
1401 N. Main Street, Suite 200
Piedmont, MO 63957.

6/27/06
Date

Esther C. Hatchett

PENALTY CALCULATION FOR
Missouri Tie and Timber
Reynolds, Missouri

COUNT I

VIOLATION: Failure to report toxic chemical release inventory emissions for creosote in a timely manner during calendar year 2002.

EXTENT: LEVEL B – Less than \$10 million in total corporate entity sales and less than 50 employees

CIRCUMSTANCE: LEVEL 1 - Description: Failure to submit 2002 Form R report for polycyclic aromatic compounds by July 1, 2003.

GRAVITY BASED

PENALTY: \$18,700 + Adjustments: None

PROPOSED

PENALTY: \$18,700

COUNT II

VIOLATION: Failure to report toxic chemical release inventory emissions for polycyclic aromatic compounds in a timely manner during calendar year 2002.

EXTENT: LEVEL B – Less than \$10 million in total corporate entity sales and less than 50 employees

CIRCUMSTANCE: LEVEL 1 - Description: Failure to submit 2002 Form R report for creosote by July 1, 2003.

GRAVITY BASED

PENALTY: \$18,700 + Adjustments: None

PROPOSED

PENALTY: \$18,700

COUNT III

VIOLATION: Failure to report toxic chemical release inventory emissions for benzo(g,h,i)perylene in a timely manner during calendar year 2002.

EXTENT: LEVEL B – Less than \$10 million in total corporate entity sales and less than 50 employees

CIRCUMSTANCE: LEVEL 1 - Description: Failure to submit 2002 Form R report for benzo(g,h,i)perylene by July 1, 2003.

GRAVITY BASED

PENALTY: \$18,700 + Adjustments: None

PROPOSED

PENALTY: \$18,700

COUNT IV

VIOLATION: Failure to report toxic chemical release inventory emissions for benzo(g,h,i)perylene in a timely manner during calendar year 2001.

EXTENT: LEVEL B – Less than \$10 million in total corporate entity sales and less than 50 employees

CIRCUMSTANCE: LEVEL 1 - Description: Failure to submit 2001 Form R report for benzo(g,h,i)perylene by July 1, 2002.

GRAVITY BASED

PENALTY: \$18,700 + Adjustments: None

PROPOSED

PENALTY: \$18,700

COUNT V

VIOLATION: Failure to report toxic chemical release inventory emissions for creosote in a timely manner during calendar year 2000.

EXTENT: LEVEL B – Less than \$10 million in total corporate entity sales and less than 50 employees

CIRCUMSTANCE: LEVEL 1 - Description: Failure to submit 2000 Form R report for polycyclic aromatic compounds by July 1, 2001.

GRAVITY BASED

PENALTY: \$18,700 + Adjustments: None

PROPOSED

PENALTY: \$18,700

COUNT VI

VIOLATION: Failure to report toxic chemical release inventory emissions for polycyclic aromatic compounds in a timely manner during calendar year 2000.

EXTENT: LEVEL B – Less than \$10 million in total corporate entity sales and less than 50 employees

CIRCUMSTANCE: LEVEL 1 - Description: Failure to submit 2000 Form R report for creosote by July 1, 2001.

GRAVITY BASED

PENALTY: \$18,700 + Adjustments: None

PROPOSED

PENALTY: \$18,700

COUNT VII

VIOLATION: Failure to report toxic chemical release inventory emissions for benzo(g,h,i)perylene in a timely manner during calendar year 2000.

EXTENT: LEVEL B – Less than \$10 million in total corporate entity sales and less than 50 employees

CIRCUMSTANCE: LEVEL 1 - Description: Failure to submit 2000 Form R report for benzo(g,h,i)perylene by July 1, 2001.

GRAVITY BASED

PENALTY: \$18,700 + Adjustments: None

PROPOSED

PENALTY: \$18,700

TOTAL PROPOSED PENALTY: \$130,900