



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912



August 13, 2013

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: *In the matter of Northeastern Shaped Wire, Inc., Docket No. EPCRA-01-2013-0052*

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

Enclosures

cc: Holly Rainey, Northeastern Shaped Wire, Inc.
Chris Rascher, EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of)
)
NORTHEASTERN)
SHAPED WIRE, INC.)
)
411 North Main St.)
Southington, CT 06489)
)
Respondent)
)
Proceeding under Section 325(c) of the)
Emergency Planning and Community)
Right-to-Know Act, 42 U.S.C. § 11045(c))
_____)

Docket No: EPCRA-01-2013-0052

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency (“EPA”) issues this administrative Complaint and Notice of Opportunity for Hearing pursuant to 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 (“EPCRA”). This action is subject to 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.
2. This Complaint alleges that Northeastern Shaped Wire, Inc. (“Respondent”) failed to submit timely, complete, and correct Toxic Chemical Release Inventory Reporting Forms, as required by Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations that set out in greater detail the Section 313 reporting requirement, 40 C.F.R. Part 372.
3. The Notice of Opportunity for Hearing describes Respondent’s option to file an Answer to the Complaint and to request a formal hearing.

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EPA-ORC
OFFICE OF
REGIONAL HEARING
SERK

II. STATUTORY AND REGULATORY AUTHORITY

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

5. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25. If the owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (the alternative threshold certification statement is also known as "Form A"). Each Form R or Form A is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located. Forms R and Forms A are hereinafter referred to as "TRI Forms."

6. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b) and 40 C.F.R. § 372.22 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification ("SIC") code or North American Industry Classification System ("NAICS") code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year are required to submit a Form R or Form A for each of these substances for that year.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection and Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provides that any person who violates any requirement of Section 313 after January 12, 2009 shall be liable to the United States for a civil penalty not to exceed \$37,500 per day for each such violation.

III. GENERAL ALLEGATIONS

8. Respondent is a corporation organized under the laws of the State of Connecticut with a usual place of business at 411 North Main St. in Southington, CT 06489.

9. Respondent operates a facility located at 411 North Main St. in Southington, CT (the "Facility") where it draws, reshapes, and rolls wire to create various wire products.

10. On October 2, 2012, a duly authorized representative of EPA conducted a compliance evaluation inspection of the facility (the "EPA inspection") to determine its compliance with EPCRA reporting requirements.

11. On November 2, 2012, Respondent submitted additional information to EPA concerning Respondent's compliance with Section 313 of EPCRA.

12. As a corporation, Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

13. Respondent is an owner or operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

14. The Facility has more than 10 "full-time employees," as that term is defined by 40 C.F.R. § 372.3.

15. The Facility is classified in a SIC code or NAICS code set forth in 40 C.F.R. § 372.23.

16. During the calendar years 2009, 2010, and 2011, Respondent processed chromium and nickel, toxic chemicals listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25.

17. During the calendar years 2009, 2010, and 2011, Respondent otherwise used ammonia, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 10,000 pounds set forth at 40 C.F.R. § 372.25.

18. During the calendar years 2010 and 2011, Respondent processed copper, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25.

19. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to Respondent's Facility.

IV. VIOLATIONS

Count 1

20. The foregoing paragraphs 1 through 19 are incorporated by reference as if fully set forth herein.

21. During the calendar year 2009, Respondent otherwise used ammonia, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2010.

22. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2010.

23. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 2

24. The foregoing paragraphs 1 through 23 are incorporated by reference as if fully set forth herein.

25. During the calendar year 2009, Respondent processed chromium, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2010.

26. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2010.

27. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 3

28. The foregoing paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

29. During the calendar year 2009, Respondent processed nickel, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI for this chemical on or before July 1, 2010.

30. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2010.

31. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 4

32. The foregoing paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

33. During the calendar year 2010, Respondent otherwise used ammonia, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2011.

34. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2011.

35. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 5

36. The foregoing paragraphs 1 through 35 are incorporated by reference as if fully set forth herein.

37. During the calendar year 2010, Respondent processed chromium, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2011.

38. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2011.

39. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 6

40. The foregoing paragraphs 1 through 39 are incorporated by reference as if fully set forth herein.

41. During the calendar year 2010, Respondent processed copper, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2011.

42. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2011.

43. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 7

44. The foregoing paragraphs 1 through 43 are incorporated by reference as if fully set forth herein.

45. During the calendar year 2010, Respondent processed nickel, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2011.

46. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2011.

47. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 8

48. The foregoing paragraphs 1 through 47 are incorporated by reference as if fully set forth herein.

49. During the calendar year 2011, Respondent otherwise used ammonia, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2012.

50. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2012.

51. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 9

52. The foregoing paragraphs 1 through 51 are incorporated by reference as if fully set forth herein.

53. During the calendar year 2011, Respondent processed chromium, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2012.

54. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2012.

55. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 10

56. The foregoing paragraphs 1 through 55 are incorporated by reference as if fully set forth herein.

57. During the calendar year 2011, Respondent processed copper, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2012.

58. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2012.

59. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 11

60. The foregoing paragraphs 1 through 59 are incorporated by reference as if fully set forth herein.

61. During the calendar year 2011, Respondent processed nickel, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2012.

62. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2012.

63. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

V. PROPOSED CIVIL PENALTY

64. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of 313(a) of EPCRA, 42 U.S.C. § 11023(a). Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occur after January 12, 2009 are subject to penalties of up to \$37,500 per day of violation.

65. Failure to report in a timely manner, as required by Section 313, 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, compromise the validity of health studies based on consequently inaccurate data bases, and prevent comprehensive planning by federal, state, and local authorities to clean up industrial pollution.

66. The proposed civil penalty for violations of Section 313 of EPCRA 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 "Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) [as amended through April 12, 2001]" ("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.

67. The ERP states that a gravity-based penalty should be determined by considering the “circumstance level” and the “extent level” of a violation. The circumstance level of a violation takes into account the seriousness of the violation as it relates to the accuracy and availability of the information to the community, states, and federal government. The extent level of a violation is based upon the quantity of each EPCRA Section 313 chemical manufactured, processed, or otherwise used by the facility, and the size of the facility, which is based upon the number of employees and the gross sales of the violating facility. The ERP also allows other adjustments to the penalty if a violation is voluntarily disclosed, the facility has a prior violation, or the subject chemical has been delisted.

68. The first stage in calculating the penalty pursuant to the ERP requires the determination of the circumstance level of the violation. Respondent submitted TRI Forms for each of the chemicals alleged in this Complaint, which were listed under 40 C.F.R. § 372.65 and that manufactured, processed, or otherwise used by Respondent in quantities exceeding the established thresholds, less than one year late. Thus, the applicable circumstance level for all violations alleged in this Complaint is “Level 4.” For calendar year 2009, Respondent filed TRI Forms for ammonia, chromium, and nickel 57 days after the July 1 due date. For calendar year 2010, Respondent filed TRI Forms for ammonia, chromium, copper, and nickel 117 days after the July 1 due date. For calendar year 2011, Respondent filed TRI Forms for ammonia, chromium, copper, and nickel 109 days after the July 1 due date. The proposed penalties for Counts 1 through 11 were therefore calculated in accordance with the “Level 4” per-day formula for failure to report in a timely manner set forth in the ERP.

69. The second stage in calculating the proposed penalty requires the determination of the extent level. Respondent manufactured, processed, or otherwise used less than ten times the threshold amounts of Section 313 chemicals. In addition, Respondent has less than ten million

dollars in total corporate sales and less than fifty employees at the violating facility. Based upon the amount of the Section 313 chemicals used and the size and sales of the company entity, the applicable extent level for Counts 1 through 11 of this Complaint is “Level C.”

70. In addition to the determination of the applicable circumstance and extent levels for each count in this Complaint, Complainant considered other factors which may be used to adjust the penalty amount. In particular, after considering Respondent’s failure to voluntarily disclose the violations, its lack of a history of prior violations, and the subject chemicals not having been delisted, Complainant proposes no further adjustments to the gravity-based penalty amount. Note, however, that the proposed penalty is based upon the best information available to EPA at this time and may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

71. Based upon the foregoing factors, Complainant proposes that Respondent be assessed a civil penalty in the amount of thirty-two thousand one hundred fifty dollars (\$32,150) for the EPCRA violations alleged in this Complaint. For each violation, the proposed penalty is as follows:

Count 1 (Ammonia; Reporting Year 2009).....	\$2,290
Count 2 (Chromium; Reporting Year 2009).....	\$2,290
Count 3 (Nickel; Reporting Year 2009).....	\$2,290
Count 4 (Ammonia; Reporting Year 2010).....	\$3,222
Count 5 (Chromium; Reporting Year 2010).....	\$3,222
Count 6 (Copper; Reporting Year 2010).....	\$3,222
Count 7 (Nickel; Reporting Year 2010).....	\$3,222
Count 8 (Ammonia; Reporting Year 2011).....	\$3,098
Count 9 (Chromium; Reporting Year 2011).....	\$3,098

Count 10 (Copper; Reporting Year 2011).....	\$3,098
Count 11 (Nickel; Reporting Year 2011).....	\$3,098

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

72. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Any request for a hearing must be included in Respondent’s written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

73. In its Answer, Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

74. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

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

Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Laura J. Berry, the attorney assigned to represent EPA and who is designated to receive service in this matter at:

Laura J. Berry
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES04-2)
Boston, MA 02109-3912

75. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

VII. INFORMAL SETTLEMENT CONFERENCE

76. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

77. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondent or its representative should contact Laura J. Berry, Enforcement Counsel, at (617) 918-1148.

VIII. CONTINUED COMPLIANCE OBLIGATION

78. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and implementing regulations at 40 C.F.R. Part 372.

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

08/12/13
Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of)	
)	
NORTHEASTERN SHAPED WIRE, INC.)	Docket No: EPCRA-01-2013-0052
)	
411 North Main St.)	
Southington, CT 06489)	
Respondent)	COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING
)	
Proceeding under Section 325(c) of the)	
Emergency Planning and Community)	
Right-to-Know Act, 42 U.S.C. § 11045(c))	
)	

CERTIFICATE OF SERVICE

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

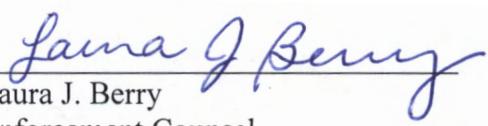
Original and one copy,
hand-delivered:

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

Copy, by Certified Mail,
Return Receipt Requested, with
copy of 40 C.F.R. Part 22:

Holly Rainey, President
Northeastern Shaped Wire, Inc.
411 North Main St.
Southington, CT 06489

Dated: 8/13/13



Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel (617) 918-1148
Fax (617) 918-0148