

Law Offices

One Logan Square, Ste. 2000  
Philadelphia, PA  
19103-6996

215-988-2700 phone  
215-988-2757 fax  
www.drinkerbiddle.com

CALIFORNIA  
DELAWARE  
ILLINOIS  
NEW JERSEY  
NEW YORK  
PENNSYLVANIA  
WASHINGTON DC  
WISCONSIN

November 3, 2010

**BY HAND DELIVERY**

Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

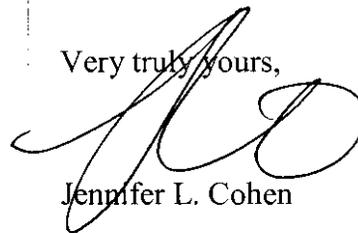
**Re: *In the Matter of Superior Tube Company, Inc.*, EPA Docket Nos.  
CERCLA-03-2010-0373 & EPCRA-03-2010-0373**

Dear Ms. Guy,

On behalf of Superior Tube Company, Inc., enclosed for filing is one original and one copy of the Answer to Administrative Complaint and Request for Hearing in the above-referenced matter.

Please feel free to contact me at your convenience if you have any questions.

Very truly yours,



Jennifer L. Cohen

JLC

David J. Brooman, Esquire  
Jennifer L. Cohen, Esquire  
**DRINKER BIDDLE & REATH LLP**  
One Logan Square, Suite 2000  
Philadelphia, PA 19103  
215-988-2700  
(215) 988-2757 fax  
Attorneys for Respondent

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, PA 19103-2029**

**In the Matter of:**

**EPA Docket No.: CERCLA -03-2010-0373  
EPA Docket No.: EPCRA-03-2010-0373**

**Superior Tube Company, Inc.  
3900 Germantown Pike  
Collegeville, Pennsylvania 19426**

**Respondent.**

**Answer to Administrative Complaint and  
Request for Hearing**

**RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLAINT AND HEARING  
REQUEST**

Respondent, Superior Tube Company, Inc. ("Respondent" or "STCI"), by and through its undersigned attorneys, hereby responds to the United States Environmental Protection Agency's ("EPA's") Administrative Complaint and Notice of Opportunity for Hearing filed under Section 103 and 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9603 and 9609, and Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004 and 11045 (the "Complaint"):

**BACKGROUND**

1. Admitted.
- 2.-5. The allegations of these Paragraphs state legal conclusions that require no response. To the extent they state facts, the allegations in these Paragraphs are denied.

6. Admitted.

7. The allegations of this Paragraph state legal conclusions that require no response. To the extent they state facts, the allegations in this Paragraph are denied.

### **COUNT I-VIOLATION OF SECTION 103 OF CERCLA**

8. Respondent incorporates by reference its responses to the allegations contained in the Paragraphs 1 through 7 above as if fully set forth herein.

9. The allegations in this Paragraph state legal conclusions that require no response. To the extent they state facts, the allegations in this Paragraph are denied

10. Admitted.

11.-13. The allegations of these Paragraphs state legal conclusions that require no response. To the extent they state facts, the allegations in these Paragraphs are denied.

14. Denied. By way of further explanation, Respondent did not have knowledge of the July 10, 2007 release of trichloroethylene at the Facility, in an amount equal to or in excess of its applicable RQ until approximately 5:30 p.m. (1730 hours) on July 11, 2007.

15. Admitted only that Respondent notified the NRC of the July 10, 2007 Release of trichloroethylene at approximately 5:32 (1732 hours) on July 11, 2007. Denied to the extent that such notification was twenty-four (24) hours and seventeen (17) minutes after Respondent had knowledge that a release of a hazardous substance had occurred at the Facility in an amount equal to, or in excess of, the applicable RQ. Instead, Respondent's notification to NRC on July 11, 2007 was an estimated two (2) minutes after Respondent had knowledge that a release of a hazardous substance had occurred at the Facility in an amount equal to or in excess of the applicable RQ.

16. The allegations in this Paragraph state legal conclusions that require no response. To the extent that they state facts, the allegations of this Paragraph are denied. Specifically, as explained in STCI's response to Paragraphs 14 and 15, it is denied that Respondent did not immediately notify the NRC of the July 10, 2007 Release as soon as Respondent had knowledge of the release such that notification was required under the applicable statutes and regulations.

17. The allegations in this Paragraph state legal conclusions that require no response. To the extent they state facts, the allegations in this Paragraph are denied. Specifically, the allegations in this paragraph are denied to the extent that they allege that Respondent failed to notify the NRC immediately of the July 10, 2007 release of trichloroethylene. It is Respondent's position that it did not violate Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and therefore, is not subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**COUNT II-VIOLATION OF SECTION 304(b) OF EPCRA-SERC**

18. Respondent incorporates by reference its responses to the allegations contained in the Paragraphs 1 through 17 above as if fully set forth herein.

19. The allegations in this Paragraph state legal conclusions that require no response. To the extent they state facts, the allegations in this Paragraphs are denied.

20. Admitted.

21. Admitted.

22. The allegations in this Paragraph state legal conclusions that require no response. To the extent they state facts, the allegations in this Paragraphs are denied.

23. Admitted to the extent that Respondent notified the Pennsylvania Emergency Management Agency of the July 10, 2007 release of trichloroethylene at approximately 5:38 p.m. on July 11, 2007. Denied to the extent that such notification was twenty-four (24) hours and twenty-three (23) minutes after Respondent had knowledge that a release of trichloroethylene had occurred at the Facility in an amount equal to or in excess of the applicable RQ. Instead, Respondent's notification to the Pennsylvania Emergency Management Agency on July 11, 2007 was an estimated eight (8) minutes after Respondent had knowledge that a release of a hazardous substance had occurred at the Facility in an amount equal to or in excess of the applicable RQ.

24. The allegations in this Paragraph state legal conclusions that require no response. To the extent that they state facts, the allegations of this Paragraph are denied. Specifically, as explained in STCI's response to Paragraphs 14 and 22, it is denied that Respondent did not immediately notify the Pennsylvania Emergency Management Agency of the July 10, 2007 Release as soon as Respondent had knowledge of the Release such that notification was required under the applicable statutes and regulations.

25. The allegations in this Paragraph state legal conclusions that require no response. To the extent they state facts, the allegations in these Paragraphs are denied. Specifically, the allegations in this Paragraph are denied to the extent that they allege that Respondent failed to notify immediately the Pennsylvania Emergency Management Agency of the July 10, 2007 release of trichloroethylene, and therefore, is Respondent's position that it did not violate Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and therefore, is not subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

26. Denied as stated. The Consent Agreement and Final Order is a written document that speaks for itself.

27. The allegations in this Paragraph state legal conclusions that require no response. To the extent they state facts, the allegations in this Paragraphs are denied. Specifically, Respondent denies that it failed to immediately notify the appropriate agency of the July 10,

2007 release of trichloroethylene, and Respondent further denies that it has therefore committed a second and subsequent violation of Section 304(a) and (b), 42 U.S.C. § 1104(a) and (b), pursuant to Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2).

### **COUNT III-VIOLATION OF SECTION 304(b) OF EPCRA-LEPC**

28. Respondent incorporates by reference its responses to the allegations contained in the Paragraphs 1 through 27 above as if fully set forth herein.

29. Admitted to the extent that Respondent notified the Montgomery County LEPC of the July 10, 2007 Release of trichloroethylene at approximately 5:45 p.m. on July 11, 2007. Denied to the extent that such notification was twenty-four (24) hours and twenty-three (30) minutes after Respondent had knowledge that a release of trichloroethylene had occurred at the Facility in an amount equal to or in excess of the applicable RQ. Instead, Respondent's notification to the Montgomery County LEPC on July 11, 2007 was an estimated fifteen (15) minutes after Respondent had knowledge that a release of a hazardous substance had occurred at the Facility in an amount equal to or in excess of the applicable RQ.

30. The allegations in this Paragraph state legal conclusions that require no response. To the extent that they state facts, the allegations in this Paragraph are denied. Specifically, as explained in Respondent's response to Paragraphs 14 and 29, it is denied that Respondent did not immediately notify the Montgomery County LEPC of the occurrence of the July 10, 2007 release as soon as the Respondent had knowledge of the release such that notification was required under the applicable statutes and regulations.

31. The allegations in this Paragraph state legal conclusions that require no response. To the extent they state facts, the allegations in this Paragraph are denied. Specifically, the allegations in this Paragraph are denied to the extent that they allege that Respondent failed to notify immediately the Montgomery County LEPC of the July 10, 2007 Release of trichloroethylene, and thus it is Respondent's position that it did not violate Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and therefore, is not subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

32. The allegations in this Paragraph state legal conclusions that require no response. To the extent they state facts, the allegations in this Paragraph are denied. Specifically, Respondent denies that it failed to immediately notify the appropriate agency of the July 10, 2007 Release of trichloroethylene, and Respondent further denies that it has therefore committed a second and subsequent violation of Section 304(a) and (b), 42 U.S.C. § 1104(a) and (b), pursuant to Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2).

### **AFFIRMATIVE DEFENSES**

**FIRST DEFENSE:** The Complaint fails to state a claim against Respondent upon which relief may be granted.

**SECOND DEFENSE:** Respondent immediately reported the July 10, 2007 release of TCE to NRC, the Pennsylvania Emergency Management Agency and the Montgomery County LEPC as soon as Respondent had knowledge that the release was at or above the applicable RQ. During the time following the TCE release until the evening of July 11, 2007 when the release was reported, Respondent's prudent and comprehensive investigation into the release indicated that the TCE release was minimal and not over the applicable RQ. As soon as any facts indicated otherwise, Respondent immediately reported the release.

**THIRD DEFENSE:** The July 10, 2007 TCE release did not adversely affect human health or the environment.

**FOURTH DEFENSE:** To the extent that Respondent's acts or omissions may, be in non-compliance with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and EPCRA Section 304(b), 42 U.S.C. § 11004(a)-(b), which Respondent adamantly denies, those failures are *de minimis* in nature, did not result in the creation of further danger as a result of the release to health and public safety, human welfare or the environment, nor did they in any form or manner result in delays, omissions or restrictions in the performance of tasks and execution of plans by federal, state and/or local emergency personnel.

**FIFTH DEFENSE:** At all times, Respondent acted diligently and expeditiously in executing its own emergency response plans, notifying the NRC, state and local emergency response personnel and assisting emergency response personnel in the execution of their tasks and obligations.

**SIXTH DEFENSE:** Respondent reserves the right to amend these pleadings and to add such further affirmative defenses as discovery and development of this matter shall disclose.

### **OPPOSITION TO PROPOSED CIVIL PENALTIES**

Respondent contests EPA's proposed penalty assessment of \$141,700.00. As an initial matter, Respondent opposes the assessment of any penalty against it resulting from its actions on July 10 and July 11, 2007 because such penalty is contrary to and unauthorized by law. To be certain, the statutes under which EPA brings its Complaint against Respondent, namely section 103 of CERCLA, 42 U.S.C. §§ 9603(a)-(b) and section 304(a)-(b) of EPCRA, 42 U.S.C. §§ 11004(a)-(b), require a facility to report a release of a hazardous substance **immediately only after the facility has knowledge that the release is equal to or greater than the RQ.** Because Respondent did not have knowledge that the release was equal to or greater than the RQ before 5:30 p.m. on July 11, 2007 and then immediately reported that release to all required authorities within the following fifteen (15) minutes, Respondent did not violate section 103 of CERCLA or section 304 of EPCRA. Likewise, because Respondent did not violate these notification requirements, it also did not commit a second and subsequent violation of Section 304(a)-(b) of EPCRA, 42 U.S.C. §§ 11004(a)-(b), pursuant to Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2).

Nonetheless, even if Respondent had committed a technical violation of section 103 of CERCLA or 304 of EPCRA, which Respondent adamantly denies, the proposed penalty

assessment of \$141,700.00 would still be arbitrary and capricious as it does not consider the "Circumstance Factors" or "Adjustment Factors" provided in 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* ("Penalty Policy"). Specifically, Respondent contests the selection of \$28,340.00 as the base penalty for each of the alleged violations. Instead, if any penalties were assessed, the "low-range" base penalty of \$24,180 (adjusted for inflation) should have been used based on application of the "Circumstance Factors," listed in Section V.D. of the Penalty Policy including the small time-frame in which the release actually took place, and the lack of actual risk that was created to human health and the environment due to Respondents proactive and cooperative actions during and following the time of the release. Likewise, EPA failed to adequately consider the "Adjustment Factors," listed in Section VIII of the Penalty Policy, including, without limitation, Section C. Degree of Culpability and Section G. Attitude, both of which can operate to reduce the penalty assessment up to 25% each for facilities that do not have knowledge of the potential hazard created or lack of control and which cooperate during the compliance evaluation/enforcement process (i.e. pre-Complaint cooperation), respectively. As indicated above, despite its comprehensive investigation following the release of TCE, Respondent did not have knowledge of any potential hazard until immediately prior to reporting the release and cooperated to the fullest extent during pre-Complaint time period.

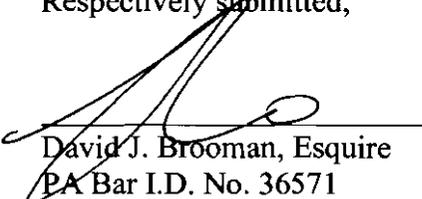
### HEARING REQUEST

Respondent hereby requests an administrative hearing on the issues raised by the Complaint in this matter.

Respectively submitted,

Date: November 3, 2010

BY:

  
David J. Brooman, Esquire

PA Bar I.D. No. 36571

Jennifer L. Cohen, Esquire

PA Bar I.D. No. 93945

DRINKER BIDDLE & REATH LLP

One Logan Square, Suite 2000

Philadelphia, PA 19103

(215) 988-1101

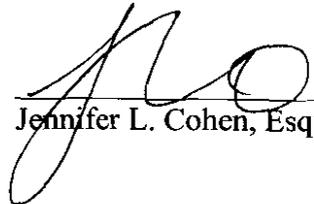
*Counsel for Respondent Superior Tube  
Company, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2010, I served a true and correct copy of the foregoing Answer to Administrative Complaint and Request for Hearing via hand delivery to the following individuals:

Jefferie E. Garcia  
Senior Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2697

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

  
Jennifer L. Cohen, Esquire