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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK C

Respondent.

Jurisdiction

3. This Complaint also serves as notice that EPA has reason to believe that Respondent has violated Section 312 of EPCRA, 42 U.S.C. § 11022 and the regulations promulgated thereunder and codified at 40 C.F.R. Part 370, governing the submission of emergency and hazardous chemical inventory forms by owners and operators of covered facilities.

Parties

4. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Air, RCRA, and Toxics Division, EPA, Region VII.

5. The Respondent is Chemcentral Midwest Corporation (Chemcentral) formerly located at 910 North Prospect, Kansas City, Missouri. Chemcentral is an active Illinois corporation that is qualified to do business in Missouri. Chemcentral is a distributor of industrial chemicals.

Statutory and Regulatory Background

6. Section 112(r)(1) of the Clean Air Act imposes a general duty on owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur. Owners and operators have been subject to the general duty clause since November 15, 1990.

7. The objective of the Clean Air Act Section 112(r) program is to have owners and operators take responsibility for chemical accident prevention and mitigation. The general duty clause reflects Congressional intent that owners and operators of stationary sources have the primary responsibility for prevention of accidents. EPA has jurisdiction to implement and enforce the general duty clause of the Clean Air Act at any facility where extremely hazardous substances are present.

8. "Owner or operator" is defined as any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

9. "Stationary source" is defined as buildings, structures, equipment, installations or substance emitting stationary activities (1) which belong to the same industrial group; (2) which are located on one or more contiguous properties (3) which are under the control of the same person (or person under common control), and (4) from which an accidental release may occur. 42 U.S.C. § 7412(r)(2)(c).

10. Section 112(r)(2)(A), defines "accidental release" as any unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source. 42 U.S.C. § 7412(2)(A) .

11. The general duty requirements apply to stationary sources regardless of the quantity of substances managed at the facility. 59 Fed. Reg. 4478, 4480 (Jan. 31, 1994) (List of Regulated Substances and Thresholds for Accidental Release Prevention; Requirements for Petitions Under Section (r) of the Clean Air Act as amended). Listed substances include any substance listed under Clean Air Act Section 112(r)(3) or any other extremely hazardous substance. "Extremely hazardous substance" includes not only listed substances under the accident prevention provisions (Clean Air Act 112(r)(3)); and extremely hazardous substances listed under EPCRA Section 302; but also "other agents which may as the result of short-term exposures associated with releases to the air cause death, injury or property damage." 59 Fed. Reg. 4478, 4481 (Jan. 31, 1994). Extremely hazardous substances include such substances that: "The release of ...which causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or which causes substantial property damage by blast, fire, corrosion or other reaction... ." 59 Fed. Reg. 4477, 4481 (Jan. 31, 1994)(quoting the Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989)).

12. Section 312(a) of EPCRA and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act (OSHA), shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the local fire department with jurisdiction over the facility, by March 1, 1988, and annually thereafter, a completed emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370) containing the information required by those sections.

13. As set forth in Section 312(b) of EPCRA and 40 C.F.R. § 370.20, the reporting threshold amount for all hazardous chemicals present at a facility at any one time during the preceding calendar year is 10,000 pounds. For extremely hazardous substances present at the facility, the reporting threshold is 500 pounds or the threshold planning quantity hereinafter ("TPQ") as defined in 40 C.F.R. Part 355, whichever is lower.

Violations

14. The Complainant hereby states and alleges that Respondent has violated the Clean Air Act and EPCRA, and federal regulations, as follows:

Count 1

15. Respondent is, and at all times referred to herein, was a "person" as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

16. Respondent's facility formerly located at 910 North Prospect, Kansas City, Missouri, was a "stationary source" pursuant to Section 112(r)(2)(c) of the Clean Air Act, 42 U.S.C. § 7412(r)(2)(c).

17. Respondent's facility was destroyed by an explosion and fire on February 7, 2007. The explosion occurred during transfer of the substance "Indopol H-300".

18. Based upon inventory records from Respondent's facility, Respondent handled and stored the substance "Indopol H-300". Indopol is the trade name for polybutene (isobutylene/butene) copolymer. Indopol H-300 is an extremely hazardous substance under Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

19. Information collected by EPA revealed that Respondent violated the general duty clause because it failed to identify hazards using appropriate hazard assessment techniques and failed to design and maintain a safe facility. Respondent did not identify the intrinsic hazards of Indopol, nor did it identify the hazards of the process equipment and the instrumentation, in order to minimize the risk of release. Respondent did not identify and implement appropriate equipment/vessel design and maintenance practices, relevant to the process and substance involved. Respondent did not operate the process and equipment in a safe manner. Respondent did not implement the safe handling, operating and storage information as provided in the Material Safety Data Sheet (MSDS) for Indopol nor did it implement the supplier's recommendations in the technical bulletin issued by the supplier.

20. Respondent is subject to the requirements of Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), because it was an owner and operator of a stationary source that stored and handled an extremely hazardous substance.

21. As set forth above, Respondent violated the general duty clause because it failed to identify hazards using appropriate hazard assessment techniques and failed to design and maintain a safe facility. Respondent's failure to comply with the general duty clause is a violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

Count 2

22. An authorized EPA representative conducted an inspection of Respondent's facility located at 910 North Prospect, Kansas City, Missouri, after the February 2007, fire and collected information regarding the inventory at Respondent's facility to determine compliance with EPCRA Section 312.

23. 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.

24. The inventory records collected from Respondent revealed that during calendar year 2006, Respondent had present at its facility, Indopol in excess of 10,000 pounds at one time.

25. Indopol is a hazardous chemical as defined under Section 312 of EPCRA and 40 C.F.R. Part 370.2.

26. Respondent failed to submit an emergency and hazardous chemical inventory form for calendar year 2006 to the LEPC or to the SERC or to the fire department by March 1, 2007.

27. Respondent's failure to submit an emergency and hazardous chemical inventory form to the LEPC or the SERC or the fire department is a violation of EPCRA Section 312(a) and of the requirements of 40 C.F.R. Part 370, Subpart B.

28. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 22 through 27 above, it is proposed that a civil penalty of \$32,500 be assessed against Respondent.

Count 3

29. The facts and allegations stated in Paragraphs 22, 23 and 25 are hereby incorporated by reference.

30. The inventory records collected from Respondent revealed that during calendar year 2005, Respondent had present at its facility, Indopol in excess of 10,000 pounds at one time.

31. Respondent failed to submit an emergency and hazardous chemical inventory form for calendar year 2005 to the LEPC or to the SERC or to the fire department by March 1, 2006.

32. Respondent's failure to submit an emergency and hazardous chemical inventory form to the LEPC or the SERC or the fire department is a violation of EPCRA Section 312(a) and of the requirements of 40 C.F.R. Part 370, Subpart B.

33. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 29 through 32 above, it is proposed that a civil penalty of \$1,500 be assessed against Respondent.

Count 4

34. The facts and allegations stated in Paragraphs 22, 23 and 25 are hereby incorporated by reference.

35. The inventory records collected from Respondent revealed that during calendar year 2004, Respondent had present at its facility, Indopol in excess of 10,000 pounds at one time.

36. Respondent failed to submit an emergency and hazardous chemical inventory form for calendar year 2004 to the LEPC or to the SERC or to the fire department by March 1, 2005.

37. Respondent's failure to submit an emergency and hazardous chemical inventory form to the LEPC or the SERC or the fire department is a violation of EPCRA Section 312(a) and of the requirements of 40 C.F.R. Part 370, Subpart B.

38. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 34 through 37 above, it is proposed that a civil penalty of \$1,500 be assessed against Respondent.

Relief

39. Section 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. § 7413(d)(1)(B), authorizes a civil penalty of up to \$25,000 per day for each violation of the Clean Air Act that occur prior to January 30, 1997. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, civil penalties of up to \$27,500 per day per violation may be assessed for violations occurring on or after January 30, 1997 through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004. The penalty proposed below is based upon the facts stated in this Complaint, and on the nature, circumstances, extent and gravity of the above cited violations in accordance with the Clean Air Act, Section 113(e), 42 U.S.C. § 7413(e).

40. For the Clean Air Act violation stated herein, it is proposed that a penalty of \$398,760, be assessed. Pursuant to Rule 22.19(a)(3) of the Consolidated Rules of Practice, EPA will explain in its prehearing exchange how the proposed penalty was calculated in accordance with the criteria set forth in the Clean Air Act.

41. Section 325(c) of EPCRA, authorizes a civil penalty of not more than \$25,000 for each violation of Section 312 of EPCRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, civil penalties of up to \$27,500 per day per violation may be assessed for violations occurring on or after January 30, 1997 through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004. The penalty proposed in paragraphs 28, 33 and 38, 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 Sections 304, 311 and 312 of EPCRA. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to a particular case.

42. The proposed penalty as set forth in this Complaint is 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.

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

- Payment of the total penalty - \$434,260 - 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

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

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

45. 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, (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.

46. 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.

47. 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.

48. 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

49. 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 penalty proposed shall be ordered unless the penalty is clearly inconsistent with the record of the proceeding or the Clean Air Act or EPCRA.

Informal Settlement Conference

50. 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:

Julie M. Van Horn
Senior Assistant Regional Counsel
United States Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101
Telephone (913)551-7889

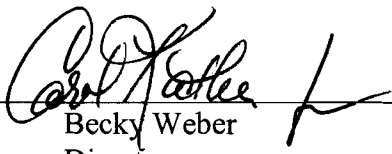
51. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

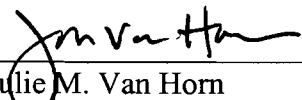
52. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement through an informal settlement conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order. The issuance 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.

53. 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.

JUL 23 2007

Date _____


Becky Weber
Director
Air, RCRA and Toxics Division


Julie M. Van Horn
Senior Assistant Regional Counsel


Enclosures: Consolidated Rules of Practice

CERTIFICATE OF SERVICE

I certify that the original and one true and correct copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101; and a true and correct copy of the foregoing Complaint and a copy of the Consolidated Rules of Practice were mailed by certified mail, return receipt requested, to:

CSC-Lawyers Incorporating Service Company
221 Bolivar Street
Jefferson City, Missouri 65101.

1/22/07
Date

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