



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

BY HAND

January 4, 2011

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square, Suite 100
Mail Code: ORA 18-1
Boston, MA 02109-3912

RECEIVED
JAN 4 - 2010
EPA ORC WS
Office of Regional Hearing Clerk

Re: In the Matter of Pharmco Products, Inc., EPA Docket Numbers:
CAA-01-2010-0013 and EPCRA-01-2010-0014

Dear Ms. Santiago:

Please file the enclosed Complaint and Notice of Opportunity for Hearing in the above-mentioned matter. I have also enclosed the accompanying Certificate of Service for filing. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Catherine Smith".

Catherine Smith
Senior Enforcement Counsel

Enclosures

cc: Gary McInerney
Susan M. Cook, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

_____))
IN THE MATTER OF))
))
Pharmco Products, Inc.))
58 Vale Road))
Brookfield, CT 06804))
))
Proceeding under Section 113(d) of the))
Clean Air Act, 42 U.S.C. § 7413(d); and))
Section 325(c) of Title III of the Superfund))
Amendments and Reauthorization Act,))
42 U.S.C. § 11045(c)))
_____)

Docket Nos: CAA-01-2010-0013
EPCRA-01-2010-0014

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

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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 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), and 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. §§ 22.1-22.52. The authority to issue this Complaint has been delegated to the Director of the Office of Environmental Stewardship, Region 1 (“Complainant”).

2. The Complaint notifies Pharmco Products, Inc. (“Respondent” or “Pharmco”), that EPA intends to assess civil penalties for Respondent’s failure to:
- (a) timely submit material safety data sheets or chemical lists to the proper authorities, in violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370;
 - (b) timely submit Tier II hazardous chemical inventory forms to the proper authorities, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370;
 - (c) timely provide toxic chemical release inventory reporting forms to EPA and the State of Connecticut in violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and its implementing regulations at 40 C.F.R. Part 372; and,
 - (d) submit a risk management plan (“RMP”) for pentane before storing it in amounts that exceeded the regulatory threshold, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations at 40 C.F.R. Part 68.
3. The Notice of Opportunity for Hearing describes Respondent’s option to file an Answer to the Complaint and to request a formal hearing.

II. APPLICABLE STATUTES AND REGULATIONS

EPCRA Statutory and Regulatory Authority

4. In accordance with Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), the owner or operator of a facility that is required by the Occupational Safety and Health Act (“OSHA”) to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical must submit a MSDS for each hazardous chemical present at the facility (or a list of such chemicals)

to the state emergency response commission (“SERC”), the local emergency planning committee (“LEPC”) and the local fire department. Additionally, Section 311(b) of EPCRA, 42 U.S.C. § 11021(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of Section 311(a) of EPCRA, 42 U.S.C. § 11021(a).

5. In accordance with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), owners and operators of facilities that are required to prepare or have available MSDSs for hazardous chemicals under OSHA (“hazardous chemicals” or “hazardous chemicals under OSHA”) must prepare and submit an emergency and hazardous chemical inventory form (“Tier I” or “Tier II” form) to the LEPC, SERC, and local fire department. Tier I or Tier II forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. Additionally, Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

6. The regulations promulgated pursuant to Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, are found at 40 C.F.R. Part 370. EPA promulgated new regulations to implement 311 and 312 of EPCRA on November 30, 2008 (73 Fed. Reg. 65478), but the substantive requirements relevant to the violations alleged herein did not change. Hereinafter, the Complaint cites the current version of the applicable 40 C.F.R. Part 370 regulations with cross references to the citations that were in effect at the time of the alleged violations.

7. In accordance with Sections 311(b) and 312(b) of EPCRA, 42 U.S.C. §§ 11021(b) and 11022(b), 40 C.F.R. § 370.10(a) (formerly § 370.20(b)) establishes minimum threshold levels for hazardous chemicals for the purposes of Part 370.

8. Under 40 C.F.R. §§ 370.20, 370.30, and 370.32 (formerly §§ 370.20 and 370.21), the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level must submit a MSDS for each hazardous chemical to the LEPC, SERC, and local fire department. Alternatively, the owner or operator may submit a list of the hazardous chemicals for which the MSDS is required (“chemical list”), grouped by hazard category, with the chemical or common name of each hazardous chemical as provided on the MSDS and a description of the hazardous component of each hazardous chemical. The MSDS or chemical list must be submitted within three months after the owner or operator is first required to prepare or have an MSDS available for a hazardous chemical or after such chemical becomes present in an amount exceeding the threshold established in 40 C.F.R. § 370.10(a) (formerly § 370.21(b)).

9. Under 40 C.F.R. §§ 370.20, 370.40, and 370.44 (formerly §§ 370.20 and 370.25), the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level must prepare and submit a Tier I or Tier II form to the LEPC, SERC and local fire department. Forty C.F.R. § 370.45 (formerly § 370.25(a)) prescribes that Tier I or Tier II forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. The LEPC, SERC or local fire department may request that a facility submit the more comprehensive Tier II form in lieu of the Tier 1 form. Connecticut requires the Tier II form.

10. In accordance with Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), owners or operators of a facility subject to the requirements of Section 313 must prepare and submit annually, no later than July 1 of each year, a toxic chemical release form (“TRI Form”) for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise

used during the preceding calendar year at the facility in quantities exceeding the thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. Part 372. Under Section 313(a), each TRI form is required to be submitted to EPA and to the state in which the subject facility is located.

11. The regulations promulgated pursuant to Section 313 of EPCRA, 42 U.S.C. § 11023, are found at 40 C.F.R. Part 372.

12. Forty C.F.R. § 372.22 provides that owners or operators of facilities that have 10 or more full-time employees; that are in the Standard Industrial Classification (“SIC”) codes or North American Industry Classification System (“NAICS”) codes specified in 40 C.F.R. §§ 372.22(b) and 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 by 40 C.F.R. § 372.30 to submit a Form R for each of these substances for that year. The thresholds for reporting are found in 40 C.F.R. §§ 372.25 and 372.28. Unless otherwise specified under 40 C.F.R. § 372.28, generally the thresholds for reporting are 25,000 pounds for chemicals that are “manufactured” or “processed” and 10,000 pounds for chemicals that are “otherwise used.” Pursuant to 40 C.F.R. § 372.27, if the amount manufactured, processed, or otherwise used is less than or equal to 1,000,000 pounds and the reportable amount is less than or equal to 500 pounds per year, the owner or operator is not required to submit the Form R for such chemical under § 372.30, but must instead submit a certification statement that contains the information required in 40 C.F.R. § 372.95 before July 1 of each year (commonly referred to as a “Form A”). This alternate option reporting option is not available for all chemicals. Hereinafter, Form As and Form Rs collectively shall be referred to as “TRI Forms.”

13. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provides for the assessment of civil penalties for violations of Section 312(a) and 313(a) of EPCRA, 42 U.S.C. §§ 11022(a) and 11023(a), in amounts of up to \$32,500 per day for violations occurring between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for violations occurring after January 12, 2009.

14. Likewise, Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the DCIA, 31 U.S.C. § 3701, provides for the assessment of civil penalties for violations of Section 311 of EPCRA, 42 U.S.C. § 11021, in amounts of up to \$11,000 per day for violations occurring between January 31, 1997 and January 12, 2009, and up to \$16,000 per day for violations occurring after January 12, 2009.

CAA Statutory and Regulatory Authority

15. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. Specifically, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish for each regulated substance the threshold quantity over which an

accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection and correction of accidental releases of regulated substances. One of the requirements of Section 112(r)(7), 42 U.S.C. § 7412(r)(7), is that owners or operators of certain stationary sources prepare and implement an RMP.

16. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

17. The regulations promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are found at 40 C.F.R. Part 68.

18. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 and their associated threshold quantities (“RMP chemicals” or “regulated substances”) in accordance with the requirements of Section 112(r)(3) and (7) of the CAA, 42 U.S.C. § 7412(r)(3) and (7).

19. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

20. Each process in which a regulated substance is present in more than a threshold quantity (“covered process”) is subject to one of three Risk Management Programs. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Pursuant to 40 C.F.R.

§ 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the OSHA process safety management standard at 29 C.F.R.

§ 1910.119. Forty C.F.R. § 68.10(c) prescribes that a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

21. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source subject to the requirements of Part 68 submit an RMP to EPA, as provided in 40 C.F.R.

§§ 68.150. The RMP documents compliance with the elements of the Risk Management Program to which the source is subject.

22. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$32,500 per day for violations occurring between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for violations occurring after January 12, 2009.

III. GENERAL ALLEGATIONS

23. Respondent operates a facility located at 68 Vale Road in Brookfield, Connecticut (the "Facility"), where Respondent blends commercial alcohols; sells and repackages alcohols and other solvents; and warehouses chemicals for sale and distribution.

24. Respondent is a corporation organized under the laws of the State of Connecticut. As a corporation, Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), 40 C.F.R. § 370.66 (formerly § 370.2), and 40 C.F.R. § 372.5 against whom a civil penalty may be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). Additionally, Respondent is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), against whom an administrative order assessing a civil penalty may be issued under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

25. 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), 40 C.F.R. § 370.66, and 40 C.F.R. § 372.3. Likewise, Respondent is an owner or operator of a “stationary source,” as that term is defined at Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

26. On April 28, 2008, EPA sent a Notice of Inspection letter to Respondent, informing the company that EPA would be conducting an EPCRA inspection at the Facility on May 22, 2008.

27. On May 22, 2008, EPA conducted an EPCRA inspection at the Facility. At this time, Respondent produced a Tier II form for Reporting Year 2007 that had been generated and submitted after EPA’s Notice of Inspection letter had been received (“the May 2008 Tier II form”). Respondent’s documentation further indicated that the form had been filed with the proper authorities on May 15, 2008, two and a half months after the March 1, 2008 deadline for 2007 Tier II forms.

28. According to information received from Respondent, Respondent also filed its MSDSs with the proper authorities in May of 2008.

29. The May 22, 2008 inspection and a review of records revealed that, prior to May 2008, Respondent had not filed Tier II forms or MSDSs with the LEPC, SERC, or fire department.

30. On November 12, 2008, EPA conducted an EPCRA and CAA Section 112(r) inspection of the Facility. Respondent subsequently self-disclosed EPCRA violations to EPA on November 18, 2008 and May 5, 2009, for which EPA denied penalty relief.

31. According to the May 2008 Tier II form, the following chemicals were present at the Facility during 2007. The amounts referenced are the maximum amounts in pounds ("lbs.") present at the Facility at any one time during 2007.

Acetic acid	15,067 lbs.
Acetone	82,727 lbs.
Acetonitrile	10,771 lbs.
Ammonium hydroxide	18,273 lbs.
Chloroform	15,114 lbs.
Cyclohexane	14,771 lbs.
Dichloromethane	54,831 lbs.
Diethyl phthalate	10,598 lbs.
Dimethyl formamide	19,044 lbs.
Ethanol	405,726 lbs.
Ethyl acetate	40,308 lbs.
Formaldehyde	999 lbs.
Heptanes	38,976 lbs.
Hexanes	22,362 lbs.
Hydrochloric acid	16,986 lbs.
Isopropanol	22,362 lbs.
Methanol	77,692 lbs.
Methyl isobutyl ketone	12,034 lbs.
N-pentane	26,817 lbs.
Petroleum ether	14,937 lbs.
Phosphoric acid	45,904 lbs.
Sulfuric acid	15,553 lbs.
Tetrahydrofuran	29,350 lbs.
Toluene	32,572 lbs.
Xylenes	25,611 lbs.

The above-mentioned substances are “hazardous chemicals” as defined under 29 C.F.R. § 1910.1200(c), and all exceed the minimum threshold levels set forth in 40 C.F.R. § 370.10(a) (formerly § 370.20(b)).¹ Additionally, three of the chemicals – chloroform, formaldehyde and sulfuric acid – are considered “extremely hazardous substances” pursuant to 40 C.F.R. Part 355. In accordance with 40 C.F.R. § 370.10(a) (formerly § 370.20(b)), extremely hazardous substances are subject to a 500 pounds minimum threshold level (“MTL”), while other hazardous chemicals (except some fuels at retail gas stations) are subject to a higher 10,000 pounds MTL. None of these compounds fall into the exceptions to EPCRA’s definition of hazardous chemicals listed at 40 C.F.R. § 370.66 (formerly § 370.2).

32. On February 9, 2009, Respondent submitted to EPA a revised inventory summary (the “February 2009 Inventory Summary”), which contained some inventory information for 2007 that differed from the amounts listed on the May 2008 Tier II form. The revised inventory information was as follows: ethanol (1,237,453 lbs), hydrochloric acid (6,285 lbs), isopropanol (86,129 lbs), phosphoric acid (38,586 lbs). In addition, the following OSHA hazardous chemicals were added, all having inventories in excess of the 10,000 pounds MTL: methyl ethyl ketone (10,974 lbs); propane (10,590 lbs), propylene glycol (13,334 lbs); and trichloroethylene (12,449 lbs).

33. The February 2009 Inventory Summary submitted by Respondent also indicated that Respondent had the following OSHA hazardous chemicals present at the Facility in amounts that exceeded MTLs in calendar years 2004, 2005, and 2006:

¹ It is possible that hydrochloric acid did not exceed the threshold if the revised inventory information submitted on February 9, 2009 is more accurate than the inventory information submitted in the May 2008 Tier II form.

MTL and Maximum Amount of Chemical Present at Any One Time in Pounds (only listed if chemical exceeds MTL)

<u>Chemical</u>	<u>MTL</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>First Documented Exceedence (lbs)</u>
Acetic acid	10,000	14,295	14,295	11,882	15,067	1/7/04 (10,397)
Acetone	10,000	97,004	89,449	71,086	82,727	1/2/04 (41,365)
Acetonitrile	10,000	--	--	--	10,771	9/14/07 (10,302)
Ammonium hydroxide	10,000	10,926	7,791	21,046	18,273	3/11/04 (10,926)
Chloroform	500	--	13,276	13,764	15,114	1/3/05 (10,086)
Cyclohexane	10,000	--	--	--	14,771	11/8/07 (14,771)
Dichloromethane	10,000	36,613	64,761	52,680	54,831	1/15/04 (10,100)
Diethyl phthalate	10,000	64,923	56,090	33,022	10,598	1/2/04 (18,496)
Dimethyl formamide	10,000	--	14,634	16,817	19,044	4/21/05 (10,794)
Ethyl acetate	10,000	42,346	44,727	53,876	40,308	1/31/04 (11,738)
Ethanol	10,000	--	--	--	1,237,453	unknown, so assume 12/31/07
Formaldehyde	500	--	1,458	1,176	999	1/3/05 (1,226)
Heptanes	10,000	23,547	33,782	44,222	38,976	2/9/04 (12,736)
Hexanes	10,000	70,254	26,975	30,340	22,362	1/29/04 (10,665)
Isopropanol	10,000	168,264	124,893	125,055	86,129	1/15/04 (11,487)
Methyl Ethyl Ketone	10,000	13,976	34,893	58,730	10,974	7/19/04 (11,406)
Methanol	10,000	99,154	63,691	84,512	77,692	1/27/04 (38,077)
Methyl isobutyl ketone	10,000	--	28,490	33,613	12,034	8/9/05 (12,623)
N-pentane	10,000	12,327	20,329	19,309	26,817	10/29/04 (12,327)
Phosphoric acid	10,000	28,749	26,975	38,685	38,586	2/24/04 (26,383)
Propane	10,000	--	--	--	10,590	unknown, so assume 12/31/07
Propylene glycol	10,000	--	--	14,030	13,334	12/1/06 (14,030)
Sulfuric acid	500	18,857	22,323	20,329	15,553	1/2/04 (2,737)
Tetrahydrofuran	10,000	35,866	12,378	13,027	29,350	4/12/04 (18,995)
Toluene	10,000	17,000	12,044	47,422	35,572	3/4/04 (11,305)
Trichloroethylene	10,000	11,040	12,378	13,027	12,449	10/12/04 (11,040)
Xylenes	10,000	15,331	24,357	27,266	25,611	2/4/04 (10,204)

34. At all times relevant to the violations cited herein, Respondent was required under OSHA to prepare or have available on-site MSDS for the hazardous chemicals listed in Paragraphs 31 to 33.

35. As the operator of a facility that was required to prepare or have available MSDSs for hazardous chemicals under OSHA, which hazardous chemicals were present at the Facility in quantities exceeding the MTL, Respondent was subject to Part 370. In particular, the presence of the hazardous chemicals listed in Paragraphs 31 to 33, and their associated quantities, required the company to:

(a) submit a Tier II form to the LEPC, SERC, and local fire department by March 1 of 2005, 2006, 2007, and 2008, with respect to chemical inventory in the previous calendar year; and

(b) provide a one-time submittal of a MSDS for each hazardous chemical or a chemical list to the LEPC, SERC and local fire department.

36. During the time period subject to the allegations in this Complaint, Respondent employed more than 10 full time employees.

37. During the time period subject to the allegations in this Complaint, Respondent was classified in SIC code 5169 and NAICS code 325193, which, pursuant to 40 C.F.R. §§ 372.22(b) and 372.23, are codes subject to EPCRA Section 313 reporting.

38. On or about July 13, 2010, EPA sent a CAA Notice of Violation, Administrative Order and Reporting Requirement (“NOV/AO/RR”) to Respondent, the cover letter to which included questions regarding compliance with Section 313 of EPCRA. On or about August 23, 2010, Respondent provided responses to EPA’s questions regarding compliance with Section 313 of EPCRA.

39. During reporting year 2006, Respondent manufactured or processed approximately 50,252 pounds of n-methyl 2-pyrrolidone, a chemical listed under 40 C.F.R. § 372.65. Pursuant to 40 C.F.R. § 372.25, the threshold reportable quantity for the manufacture or processing of this chemical is 25,000 pounds.

40. Respondent was therefore required to complete and submit a TRI form for n-methyl 2-pyrrolidone to EPA on or before July 1, 2007 for reporting year 2006. Respondent submitted a form for this chemical for reporting year 2006 on April 30, 2009.

41. During reporting year 2007, Respondent manufactured or processed approximately 36,274 pounds of n-methyl 2-pyrrolidone, 78,341 pounds of n-hexane, 38,858 pounds of methyl isobutyl ketone and 46,719 pounds of nitric acid, all chemicals listed under 40 C.F.R. § 372.65. Pursuant to 40 C.F.R. § 372.25, the threshold reportable quantity for the manufacture or processing of each of these chemicals is 25,000 pounds.

42. Respondent was therefore required to complete and submit TRI forms for n-methyl 2-pyrrolidone, n-hexane, methyl isobutyl ketone and nitric acid to EPA on or before July 1, 2008 for reporting year 2007. Respondent submitted forms for these chemicals for reporting year 2007 on April 30, 2009.

43. In addition to being a hazardous chemical for the purposes of EPCRA Sections 311 and 312, n-pentane (“pentane”) is a RMP chemical listed at 40 C.F.R. § 68.130 that requires an RMP when present in a “covered process” in quantities above 10,000 pounds. Respondent’s May 2008 Tier II form indicated that a maximum quantity of 28,617 pounds of that chemical had been present at the Facility in 2007, and the February 2009 Inventory Summary revealed that pentane had been present at the Facility since at least 2004.

44. Inventory records sent to EPA on February 9, 2009, revealed that Respondent stored pentane in amounts exceeding 10,000 lbs. for approximately three days in 2004; six days in 2005; twenty-nine days in 2006; and sixteen days in 2007.

45. Respondent’s May 2008 Tier II form indicates that the pentane was stored in the Facility’s warehouse, which warehouse also contained other chemicals that were flammable or could release toxic gases.

46. However, information received from Respondent on July 29, 2010 during the NOV/AO/RR conference, indicates that some of the pentane shipments may have been stored in a single shipping container outside the warehouse.

47. During 2004, 2005, 2006, and 2007, Respondent stored more than the threshold amount of regulated pentane in a “covered process,” as that term is defined at 40 C.F.R. § 68.3.

48. As the operator of a stationary source that had more than the threshold amount of a regulated substance in a covered process, Respondent was subject to Part 68.

49. In accordance with 40 C.F.R. § 68.10(a)-(d), Respondent’s storage of pentane was subject to the requirements of either RMP Program 1 or 2, depending on the exact location of the pentane storage. When stored outside the warehouse, the covered process would have been subject to Program 2 because (1) the distance to a toxic or flammable endpoint for a worst case release of pentane was *greater* than the distance to a public receptor, making the process ineligible for Program 1, and (2) the process was not eligible for Program 3 because the pentane storage was not subject to OSHA’s process safety management standard and was not within one of the listed NAICS codes. However, when stored in the warehouse, the covered process likely would have been subject to Program 1 because the distance to a toxic or flammable endpoint for a “worst-case release” of pentane (as defined by 40 C.F.R. § 68.3) was less than a distance to a public receptor.

IV. VIOLATIONS

EPCRA SECTION 311 VIOLATIONS: Failure to Timely Provide MSDSs or Chemical Lists to the Proper Authorities

50. Complainant realleges paragraphs 1 through 49.

51. As described in paragraphs 31-33, from at least 2004 through 2007, Respondent stored OSHA hazardous chemicals at the Facility in quantities that exceeded the MTLs set forth in 40 C.F.R. § 37.10(a) (formerly § 370.20(b)).

52. Pursuant to EPCRA Section 311(a), 42 U.S.C. § 11021(a), and 40 C.F.R. §§ 370.20, 370.30 and 370.32 (formerly §§ 370.20 and 370.21), Respondent was required to prepare and submit an MSDS or a chemical list for the chemicals listed in paragraphs 31-33 to the SERC, LEPC and the local fire department within three months after each chemical was first present at the Facility in quantities exceeding the MTL. As specified in the list in paragraph 33, by January 2, 2004, if not earlier, Respondent had present some of the listed chemicals in amounts exceeding the MTL (specifically, acetone, dimethyl formamide and sulfuric acid). Accordingly, beginning on April 2, 2004, if not earlier, Respondent was required to submit MSDSs or chemical lists to the SERC, LEPC and the local fire department.

53. Respondent did not submit MSDSs for the chemicals listed in paragraphs 31-33 to the SERC, LEPC and the local fire department until May 2008.

54. Accordingly, Respondent violated EPCRA Section 311(a), 42 U.S.C. § 11021(a), and 40 C.F.R. §§ 370.20, 370.30 and 370.32 (formerly §§ 370.20 and 370.21) for at least 28 chemicals.

55. Each day a violation of EPCRA Section 311(a) continues constitutes a separate violation.²

56. Respondent is therefore subject to an assessment of penalties under Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), former 40 C.F.R. § 370.5, and 40 C.F.R. Part 19.

² See former 30 C.F.R. § 370.5(c), which was in effect at the time of the violations alleged herein.

EPCRA 312 VIOLATIONS: Failure to Timely Provide Tier II
Hazardous Chemical Inventory Forms to the Proper Authorities

57. Complainant realleges and incorporates by reference paragraphs 1 through 56 of this Complaint.

58. During calendar year 2004, Respondent stored sulfuric acid in quantities that exceeded the MTL of 500 lbs. for extremely hazardous substances set forth in 40 C.F.R. § 370.10(a)(1) (formerly § 370.20(b)(1)). Over the same period of time, the following hazardous chemicals were also present at the Facility in quantities that exceeded the MTL of 10,000 lbs. prescribed by 40 C.F.R. § 370.10(a)(2) (formerly § 370.20(b)(3)): acetic acid, acetone, dichloromethane, diethyl phthalate, ethyl acetate, heptanes, hexanes, isopropanol, methyl ethyl ketone, methanol, n-pentane, phosphoric acid, sulfuric acid, tetrahydrofuran, toluene, trichloroethylene, and xylenes.

59. During calendar year 2005, Respondent stored sulfuric acid, chloroform, and formaldehyde in quantities that exceeded the MTL of 500 lbs. for extremely hazardous substances set forth in 40 C.F.R. § 370.10(a)(1) (formerly § 370.20(b)(1)). Over the same period of time, the following hazardous chemicals were also present at the Facility in quantities that exceeded the MTL of 10,000 lbs. prescribed by 40 C.F.R. § 370.10(a)(2) (formerly § 370.20(b)(3)): acetic acid, acetone, dichloromethane, diethyl phthalate, dimethyl formamide, ethyl acetate, heptanes, hexanes, isopropanol, methanol, methyl isobutyl ketone, n-pentane, petroleum ether, phosphoric acid, tetrahydrofuran, toluene, trichloroethylene, and xylenes.

60. During calendar year 2006, Respondent stored sulfuric acid, chloroform, and formaldehyde in quantities that exceeded the MTL of 500 lbs. for extremely hazardous substances set forth in 40 C.F.R. § 370.10(a)(1) (formerly § 370.20(b)(1)). Over the same period

of time, the following hazardous chemicals were also present at the Facility in quantities that exceeded the MTL of 10,000 lbs. prescribed by 40 C.F.R. § 370.10(a)(2) (formerly § 370.20(b)(3)): acetic acid, acetone, ammonium hydroxide, dichloromethane, diethyl phthalate, dimethyl formamide, ethyl acetate, heptanes, hexanes, hydrochloric acid, isopropanol, methyl ethyl ketone, methanol, methyl isobutyl ketone, n-pentane, phosphoric acid, tetrahydrofuran, toluene, trichloroethylene, and xylenes.

61. During calendar year 2007, Respondent stored chloroform, formaldehyde and sulfuric acid in quantities that exceeded the MTL of 500 lbs. for extremely hazardous substances set forth in 40 C.F.R. § 370.10(a)(1) (formerly § 370.20(b)(1)). Over the same period of time, at least the following hazardous chemicals were also present at the Facility in quantities that exceeded the MTL of 10,000 lbs. prescribed by 40 C.F.R. § 370.10(a)(2) (formerly § 370.20(b)(3)): acetic acid, acetone, acetonitrile, ammonium hydroxide, cyclohexane, dichloromethane, diethyl phthalate, dimethyl formamide, ethanol, ethyl acetate, heptanes, heptanes, isopropanol, methyl ethyl ketone, methanol, methyl isobutyl ketone, n-pentane, petroleum ether, phosphoric acid, propane, propylene glycol, sulfuric acid, tetrahydrofuran, toluene, trichloroethylene, and xylenes.

62. Pursuant to EPCRA Section 312(a), 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40 and 370.44 (formerly §§ 370.20 and 370.25), Respondent was required to prepare and submit a Tier II form to the SERC, LEPC and local fire department for calendar years 2004, 2005, 2006, and 2007 on or before March 1 of the next calendar year, in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), and 40 C.F.R. § 370.42.

63. Respondent failed to submit Tier II forms by March 1 of 2005, 2006, 2007 and 2008, to the SERC, LEPC and local fire department.

64. Accordingly, Respondent violated EPCRA Section 312(a), 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, and 370.44 (formerly §§ 370.20 and 370.25).

65. Each day a violation of EPCRA Section 312(a) continues constitutes a separate violation.³

66. Respondent is therefore subject to an assessment of penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), former 40 C.F.R. § 370.5, and 40 C.F.R. Part 19.

EPCRA 313 VIOLATIONS: Failure to Timely File Toxic Chemical Release Inventory Reporting Forms

67. Complainant realleges and incorporates by reference paragraphs 1 through 66 of this Complaint.

68. During reporting year 2006, Respondent manufactured or processed n-methyl 2-pyrrolidone, a chemical listed under 40 C.F.R. § 372.65, in quantities that exceeded the minimum threshold level of 25,000 lbs. set forth at 40 C.F.R. § 372.25.

69. Pursuant to EPCRA Section 313(a), 42 U.S.C. § 11023(a) and 40 C.F.R. § 372.22, Respondent was required to submit a Form R for n-methyl 2-pyrrolidone to EPA and the State of Connecticut to report the data required by Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), for calendar year 2006 on or before July 1, 2007, or alternatively to submit a Form A in compliance with the alternate threshold and certification requirements of 40 C.F.R. §§ 327.27 and 372.95 by such date.

³ See former 30 C.F.R. § 370.5(c), which was in effect at the time of the violations alleged herein.

70. Respondent failed to submit a TRI form for n-methyl 2-pyrrolidone by July 1, 2007, to EPA and the State of Connecticut, in violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.30 (or alternatively 372.27).

71. During reporting year 2007, Respondent manufactured or processed n-methyl 2-pyrrolidone, n-hexane, methyl isobutyl ketone and nitric acid, all chemicals listed under 40 C.F.R. § 372.65, in quantities that exceeded the MTL of 25,000 lbs. set forth at 40 C.F.R. § 372.25.

72. Pursuant to EPCRA Section 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.22, Respondent was required to submit TRI forms for n-methyl 2-pyrrolidone, n-hexane, methyl isobutyl ketone and nitric acid to EPA and the State of Connecticut to report the data required by Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), for calendar year 2007 on or before July 1, 2008, or alternatively to submit a Form A in compliance with the alternate threshold and certification requirements of 40 C.F.R. §§ 327.27 and 372.95 by such date.

73. Respondent failed to submit TRI forms for n-methyl 2-pyrrolidone, n-hexane, methyl isobutyl ketone and nitric acid by July 1, 2008, to EPA and the State of Connecticut, in violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 (or alternatively § 372.27).

74. Respondent is therefore subject to an assessment of penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), 40 C.F.R. § 372.18, and 40 C.F.R. Part 19.

CAA VIOLATION: Failure to Submit an RMP for Storage of Pentane

75. Complainant realleges and incorporates by reference paragraphs 1 through 74 of this Complaint.

76. During at least 2004, 2005, 2006, and 2007, Respondent stored pentane, a regulated substance, at the Facility in quantities exceeding the 10,000 lbs. threshold prescribed by 40 C.F.R. § 68.130.

77. Such pentane was stored in a “covered process,” as that term is defined in 40 C.F.R. § 68.3.

78. Pursuant to 40 C.F.R. § 68.10, and as discussed in paragraph 49 above, Respondent was required to implement either a Program 1 or 2 Risk Management Program for the storage of pentane in quantities over the 10,000 lbs. threshold.

79. Under 40 C.F.R. §§ 68.10(a) and 68.150, Respondent was required to prepare and submit a RMP for pentane documenting such compliance before it began storing pentane at the Facility. Forty C.F.R. §§ 68.12 and 68.150-68.185 specify the required elements of the RMP.

80. By failing to submit the RMP for pentane before storing it at the facility in amounts that exceeded the regulatory threshold, from approximately November 29, 2004 to October 15, 2007, Respondent violated Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), and 40 C.F.R. §§ 68.10(a), 68.12 and 68.150.

81. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), EPA obtained from the Department of Justice a waiver of the twelve-month limitation on EPA’s authority to initiate administrative cases.

82. Respondent is therefore subject to an assessment of penalties under Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. Part 19.

V. PROPOSED CIVIL PENALTY

83. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and 7413(d), as amended, authorize EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between January 30, 1997 and March 15, 2004 are subject to up to \$27,500 per day of violation; violations that occur between March 15, 2004 and January 12, 2009 are subject to up to \$32,500 per day; and violations that occur after January 12, 2009 are subject to up to \$37,500 per day of violation.

84. 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 Section 312(a) and 313(a) of EPCRA, 42 U.S.C. §§ 11022(a) and 11023(a). Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between January 30, 1997 and March 15, 2004 are subject to up to \$27,500 per day of violation; violations that occur between March 15, 2004, and January 12, 2009 are subject to up to \$32,500 per day; and violations that occur after January 12, 2009 are subject to up to \$37,500 per day of violation.

85. Likewise, Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty of up to \$10,000 per day of violation for violations of Section 311 of EPCRA, 42 U.S.C. § 11021. Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between January 31, 1997 and January 12, 2009 are subject to up to \$11,00 per day of violation, and violations that occur after January 12, 2009 are subject to up to \$16,000 per day of violation.

86. In light of the above-referenced findings, EPA seeks to assess civil penalties of up to \$32,500 per day for the following CAA and EPCRA Section 312 and 313 violations and up to \$11,000 per day for the following EPCRA Section 311 violations:

CAA

(a) Up to 652 days of violation for Respondent's failure to submit a RMP from January 1, 2006 to October 15, 2007. However, the CAA penalty shall not exceed \$270,000, in accordance with Section 113(d) of the CAA, 42 U.S.C. §7413(d), and the DCIA, 31 U.S.C. § 3701. This violation is significant because a RMP helps facility personnel and emergency responders assess and manage the hazards that are posed by chemicals at a facility so that threats of releases are minimized. Pentane is a volatile flammable liquid with a high vapor pressure, even at room temperature. The dangers associated with pentane were increased by the presence of multiple flammable and toxic chemicals that could have been implicated in any fire or explosion involving pentane.

EPCRA

(b) *EPCRA Section 311*: At least 28 violations for failing to timely submit MSDSs or a chemical list for the chemicals listed in paragraphs 31-33. The failure to file such MSDSs or chemical lists hampers the ability of federal, state, and local authorities to properly prepare for accidents. The EPCRA Section 311 reporting requirement is particularly important when a chemical first becomes present at a facility in threshold amounts between EPCRA Section 312 reporting periods because otherwise emergency responders may not find out about the presence of such a chemical until March 1 of the following year.

(c) *EPCRA Section 312*: At least three violations of failing to file a Tier II form on time by March 1 of 2006, 2007, and 2008. The failure to file such reports hampers the ability of federal, state, and local authorities to properly prepare for accidents and chemical releases.

(d) *EPCRA Section 313*: At least five violations of failing to file a TRI form on time by July 1, 2007 and July 1, 2008. Failure to report in a timely manner may deprive the community of its right to know about chemicals used, stored, or released near or in the neighborhood that may affect public health and the environment, and may also prevent comprehensive planning by federal, state and local authorities to properly prepare for accidental chemical releases.

87. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty and explaining how the proposed penalty was calculated, as required by 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; Final Rule,” 40 C.F.R. Part 22 (the “Consolidated Rules of Practice”), a copy of which is enclosed with this Complaint.

88. In determining the amount of the CAA penalty to be assessed, EPA will take into account the statutory factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e). These factors include the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require.

89. In determining the amount of the EPCRA penalty to be assessed, EPA will take into account the nature, circumstances, extent and gravity of the violations, and with respect to

the Respondent, its ability to pay, history of prior violations, degree of culpability, cooperative attitude, any economic benefit or savings resulting from the violations, and other such factors as justice may require.

90. An appropriate penalty will be derived pursuant to the following penalty policies: (1) "Combined Enforcement Response Policy for CAA Section 112(r) Risk Management Program" (August 15, 2001); (2) "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" (September 30, 1999); and (3) "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) (April 12, 2001). Copies of these penalty policies are enclosed with this Complaint. These policies provide a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case. Should any of these penalty policies be updated prior to a hearing on the case, EPA reserves the right to use the new policies and shall provide the updated policy(ies) to Respondent.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

91. 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. 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.

92. 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.

93. 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

94. 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 Catherine S. Smith, the attorney assigned to represent EPA and who is designated to receive service in this matter at:

Catherine S. Smith
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES04-4)
Boston, MA 02109-3912
Tel: (617) 918-1777

95. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

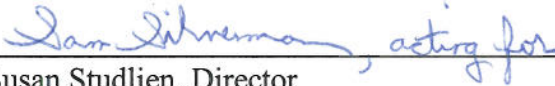
VII. INFORMAL SETTLEMENT CONFERENCE

96. 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.

97. 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 Catherine S. Smith, Enforcement Counsel, at (617) 918-1777.

VIII. CONTINUED COMPLIANCE OBLIGATION

98. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with Sections 311, 312(a) and 313(a) of EPCRA, 42 U.S.C. §§ 11021, 11022(a) and 11023(a); Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7); and implementing regulations at 40 C.F.R. Parts 370, 372, and 68.


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

12-30-10
Date

In Re: Pharmco Products, Inc..
EPA Docket Numbers: CAA-01-2010-0013 and
EPCRA-01-2010-0014

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for 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. EPA, Region I
5 Post Office Square
Suite 100 (ORA18-1)
Boston, MA 02109-3912

Two copies of complaint,
hand-delivered

Susan M. Cooke, Esq.
McDermott, Will & Emery
28 State Street
Boston, MA 02109

Dated: January 4, 2011



Catherine S. Smith
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
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Tel: (617) 918-1777
FAX: (617) 918-0777
Email: smith.catherine@epa.gov

