



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 28 2012

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

RETURN-RECEIPT: 7009 1680 0000 7667 8889

Mr. Richard M. McClain
President
6480 Lewis Road
Olmsted Falls, Ohio 44138

Re: In the matter of: American Wire and Cable Company,
Docket number: **EPCRA-05-2012-0035**

Dear Mr. McClain:

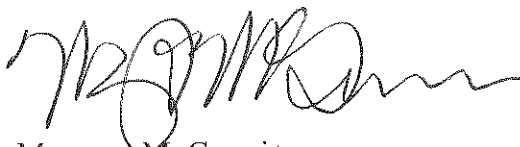
I have enclosed the Complaint filed by the U.S. Environmental Protection Agency against American Wire and Cable Company under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11045(c), and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), at 40 C.F.R. Part 22.

As provided in the Complaint, if you would like to request a hearing, you must file an answer to the Complaint in which you specifically request a hearing. You must file your answer within 30 days after receiving the Complaint with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 and send a copy to Sherry Estes, Office of Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please note that if you do not file an answer to the Complaint within 30 days after receiving the Complaint, EPA may seek a default order assessing the proposed penalty and the assessed penalty will be due 30 days after the order becomes final.

Whether or not you request a hearing, you may request an informal settlement conference. If you would like to request a conference, or if you have any questions about this matter, please contact Sherry Estes Associate Regional Counsel, at (312) 886-7164.

Sincerely,

A handwritten signature in black ink, appearing to read 'Margaret M. Guerriero', written in a cursive style.

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY SEP 28 2012
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
American Wire and Cable Company)
Cleveland, Ohio)
Respondent.)
_____)

Docket No. EPCRA-05-2012-0035
Proceeding to Assess a Civil Penalty
Under Section 325(c) of the Emergency
Planning and Community Right-to-Know
Act of 1986, 42 U.S.C. § 11045(c)

Complaint

1. This is an administrative action to assess a civil penalty under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c).

2. Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is American Wire and Cable Company, a corporation doing business in the State of Ohio.

Statutory and Regulatory Background

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

5. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees, a Standard Industrial Classification (SIC) 3351 and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) and listed at

40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f) and in 40 C.F.R. §§ 372.25, 372.27 and 372.28.

6. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to complete and submit to the Administrator of EPA and to the state in which the facility is located, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f).

7. EPA published the Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R § 372.85 pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g).

8. All persons required to report pursuant to Section 313(b) must use Form R according to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

9. The Administrator of EPA may prescribe regulations as may be necessary to carry out EPCRA. 42 U.S.C. § 11048.

10. Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$32,500 per day for each violation of

Section 313 that occurred after March 15, 2004 through January 12, 2009, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

General Allegations

11. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
12. Respondent is a corporation doing business in the State of Ohio.
13. Respondent owned or operated a facility located at 15201 Chatfield, Cleveland, Ohio 44111 during the 2006 calendar year.
14. Respondent's facility consists of buildings, equipment and structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned by the same person, entity, or corporation.
15. During the 2006 calendar year, Respondent employed at its facility the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.
16. Respondent's facility is covered by SIC Code 33519907.
17. During the 2006 calendar year, Respondent processed, as defined by 40 C.F.R. § 372.3, toxic chemicals identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65, in quantities exceeding the thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.25.
18. On September 24, 2007, a representative of EPA inspected Respondent's facility.

Count I

19. Complainant incorporates paragraphs 1 through 18 of this Complaint as if set forth in this paragraph.

20. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is processed during the 2006 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

21. During the 2006 calendar year, Respondent's facility processed 5,133,746 pounds of Copper, CAS No.7440-50-8.

22. Copper is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

23. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Ohio a Form R for Copper for the 2006 calendar year on or before July 1, 2007.

24. Respondent failed to submit to the Administrator of EPA and to Ohio a Form R for Copper for the 2006 calendar year on or before July 1, 2007.

25. On September 10, 2007, Respondent submitted to the Administrator of EPA a Form R for Copper for the 2006 calendar year.

26. Respondent's failure to submit timely to the Administrator of EPA a Form R for Copper for the 2006 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Proposed Penalty

27. Complainant proposes that the Administrator assess a civil penalty against Respondent for the EPCRA violations alleged in this Complaint as follows:

Count I

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for Copper for calendar year 2006:

CAS No. [7440-50-8].....\$10,496
Total Proposed Civil Penalty\$10,496

Complainant has determined the proposed civil penalty according to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). In determining the proposed penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)[Amended]*, dated April 12, 2001, a copy of which is enclosed with this Complaint.

Rules Governing this Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party

pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Sherry Estes to receive any answer and subsequent legal documents that Respondent serves in this proceeding.

You may telephone Ms. Estes at (312)886-7164. Her address is:

Sherry L. Estes (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terms of Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must include the case name, docket number and the billing document number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and Ms. Estes at the addresses given above, and to:

Maynard Shaw (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a

hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual

allegations in the Complaint and a waiver of the right to contest the factual allegations.

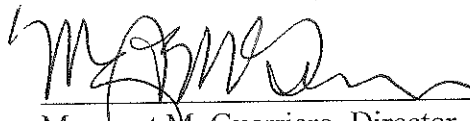
Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Maynard Shaw at (312) 353-5867. Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

September 28, 2012

Date



Margaret M. Guerriero, Director
Land and Chemicals Division

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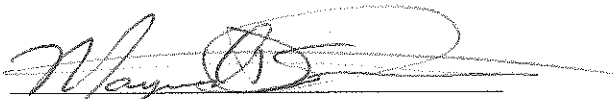
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Complaint in resolution of the civil administrative action involving American Wire and Cable Company was filed on September 28, 2012, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7667 8889 a copy of the original to the Respondent:

Mr. Richard M. McClain
President
6480 Lewis Road
Olmsted Falls, Ohio 44138

and forwarded copies (intra-Agency) to:

Ann Coyal, Regional Judicial Officer, ORC/C-14J
Sherry L. Estes, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


for

Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. EPCRA-05-2012-0035

RECEIVED

SEP 28 2012

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