



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

OCT 26 2010

REPLY TO THE ATTENTION OF:  
L-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7662 0888

Mr. Paul Heim  
Senior Vice President, General Counsel  
McQuay International/Plymouth  
13600 Industrial Park Boulevard  
Plymouth, Minnesota 55441

Re: In the Matter of: McQuay International/Plymouth Docket No. **EPCRA-05-2011-0002**

Dear Mr. Heim:

I have enclosed the Complaint filed by the U.S. Environmental Protection Agency, Region 5, against McQuay International/Plymouth, under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c).

As provided in the Complaint, if you wish to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. To request a conference, or if you have any questions about this matter, you may contact Tamara Carnovsky, Associate Regional Counsel at (312) 886-2250.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce F. Sypniewski".

Bruce F. Sypniewski  
Acting Director  
Land and Chemicals Division

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

McQuay International  
Faribault, Minnesota,

Respondent.



Docket No. EPCRA-05-2011-0002

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 McQuay International, a corporation doing business in the State of Minnesota.

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) 3585 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 owned or operated a facility located at 300 24<sup>th</sup> Street, Faribault, Minnesota (Faribault facility) during the calendar years 2005, 2006 and 2007.
13. Respondent owned or operated a facility located at 1001 21<sup>st</sup> Avenue Northwest, Owatonna, Minnesota (Owatonna facility) during the calendar years 2005, 2006 and 2007.
14. Respondent's Fairbault and Owatonna facilities consist 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. Respondent's Fairbault and Owatonna facilities are each a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
16. During the calendar years 2005, 2006 and 2007, Respondent employed at its Fairbault facility and its Owatonna facility, respectively, the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.
17. Respondent's Fairbault and Owatonna facilities are covered by SIC Code 3585.
18. During the calendar years 2005, 2006 and 2007, 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, at its Fairbault and its Owatonna facility, respectively

### **Count I**

19. Complainant incorporates paragraphs 1 through 18 of the 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 2005 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

21. During the 2005 calendar year, Respondent's Fairbault facility processed 108,800 pounds of Diisocyanates, chemical category N120.

22. Diisocyanates is a chemical category 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 Minnesota a Form R for Diisocyanates for calendar year 2005 by July 1, 2006.

24. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2005 by July 1, 2006.

25. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2005.

26. Respondent's failure to submit timely a Form R for Diisocyanates to the Administrator of EPA and to Minnesota for calendar year 2005 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

## Count II

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

28. 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).

29. During the 2006 calendar year, Respondent's Fairbault facility processed 214,200 pounds of Diisocyanates, chemical category N120.

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

31. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006 by July 1, 2007.

32. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006 by July 1, 2007.

33. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006.

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

## Count III

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

36. 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 2007 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

37. During the 2007 calendar year, Respondent's Fairbault facility processed 224,400 pounds of Diisocyanates, chemical category N120.

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

39. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007 by July 1, 2008.

40. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007 by July 1, 2008.

41. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007.

42. Respondent's failure to submit timely a Form R for Diisocyanates to the Administrator of EPA and to Minnesota for calendar year 2007 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

#### **Count IV**

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

44. 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 2005 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

45. During the 2005 calendar year, Respondent's facility processed 176,800 pounds of Diisocyanates, chemical category N120.

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

47. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2005 by July 1, 2006.

48. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2005 by July 1, 2006.

49. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2005.

50. Respondent's failure to submit timely a Form R for Diisocyanates to the Administrator of EPA and to Minnesota for calendar year 2005 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

#### Count V

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

52. 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).

53. During the 2006 calendar year, Respondent's facility processed 306,000 pounds of Diisocyanates, chemical category N120.



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

55. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006 by July 1, 2007.

56. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006 by July 1, 2007.

57. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006.

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

#### **Count VI**

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

60. 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 2007 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

61. During the 2007 calendar year, Respondent's facility processed 319,600 pounds of Diisocyanates, a chemical category.

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

63. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007 by July 1, 2008.

64. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007 by July 1, 2008.

65. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007.

66. Respondent's failure to submit timely a Form R for Diisocyanates to the Administrator of EPA and to Minnesota for calendar year 2007 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

**Proposed Penalty**

67. 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 Diisocyanates for calendar year 2005 for the Fairbault facility:

Chemical Category N120 ..... \$21,922

**Count II**

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for Diisocyanates for calendar year 2006 for the Fairbault facility:

Chemical Category N120 ..... \$21,922

**Count III**

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for Diisocyanates for calendar year 2007 for the Fairbault facility:

Chemical Category N120 ..... \$21,922

**Count IV**

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for Diisocyanates for calendar year 2005 for the Owatonna facility:

Chemical Category N120 ..... \$21,922

**Count V**

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for Diisocyanates for calendar year 2006 for the Owatonna facility:

Chemical Category N120 ..... \$32,500

**Count VI**

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for Diisocyanates for calendar year 2007 for the Owatonna facility:

Chemical Category N120 ..... \$32,500

**Total Proposed Civil Penalty ..... \$152,688**

**SECOND ADJUSTMENT TO PROPOSED PENALTY**

Based on its voluntary self-disclosure of the violations the proposed penalty for all violations in this complaint will be reduced by 35% in accordance with the "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act and Section 6607 of the Pollution Prevention Act (dated August 10, 1992),"

**Final Amended Proposed Penalty ..... \$99,247**

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-13J)  
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 Tamara Carnovsky to receive any answer and subsequent legal documents that Respondent serves in this

proceeding. You may telephone Tamara Carnovsky at (312) 886-2250. Her address is:

Tamara Carnovsky (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 Tamara Carnovsky 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.

10/26/10  
Date

  
Bruce F. Sypniewski  
Acting Director  
Land and Chemicals Division

RECEIVED  
OCT 27 2010  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY


**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Complaint involving McQuay International, was filed on October 27, 2010, with the Regional Hearing Clerk (E-19J), U. S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7662 0888, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22." to:

Mr. Paul Heim  
McQuay International/Plymouth  
13600 Industrial Park Blvd.  
Plymouth, Minnesota 55441

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Tamara Carnovsky, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. EPCRA-05-2011-0002

**RECEIVED**  
OCT 27 2010

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**