

Answer to the Complaint and to request a formal hearing.

I. STATUTORY AND REGULATORY BASIS

2. 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.

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

4. 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 R’s collectively shall be referred to as “TRI Forms.”

5. 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 313(a) of EPCRA, 42 U.S.C. § 11023(a), in amounts of up to \$37,500 per day for violations occurring after January 12, 2009.

II. GENERAL ALLEGATIONS

6. Respondent is a corporation organized under the laws of the State of Massachusetts with a single place of business at 100 Springdale Rd., Westfield, Massachusetts (“Facility”).

7. Respondent processes chromium and uses lead and methanol to produce metal rifle components and assemble rifles with those components at the Facility.

8. Respondent owns the Facility.

9. On October 20, 2014, a duly authorized representative of EPA conducted a compliance evaluation inspection of the Facility (the “EPA inspection”) to determine its compliance with EPCRA reporting requirements.

10. As a corporation, Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

11. Respondent operates a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

12. The Facility has more than 10 “full-time employees,” as the term is defined by 40 C.F.R. § 372.3.

13. The Facility is classified in a SIC code or NAICS code set forth in 40 C.F.R. § 372.23.

14. During the calendar years 2011, 2012, and 2013, Respondent otherwise used lead, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 100 pounds set forth at 40 C.F.R. 372.28.

15. During the calendar years 2011, 2012, and 2013, Respondent processed chromium, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. §372.25.

16. During the calendar years 2011 and 2012, Respondent otherwise used methanol, a toxic chemical listed under 40 C.F.R. §372.65, in quantities exceeding the threshold of 10,000 pounds set forth at 40 C.F.R. §372.65.

17. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to the Facility.

III. VIOLATIONS

Count 1: Failure to Timely File TRI Form for Lead for Reporting Year 2011

18. The foregoing paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.

19. During the calendar year 2011, Respondent otherwise used lead, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2012.

20. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2012.

21. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 2: Failure to Timely File TRI Form for Lead for Reporting Year 2012

22. The foregoing paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

23. During the calendar year 2012, Respondent otherwise used lead, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2013.

24. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2013.

25. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 3: Failure to Timely File TRI Form for Lead for Reporting Year 2013

26. The foregoing paragraphs 1 through 25 are incorporated by reference as if fully set forth herein.

27. During the calendar year 2013, Respondent otherwise used lead, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2014.

28. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2014.

29. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 4: Failure to Timely File TRI Form for Chromium for Reporting Year 2011

30. The foregoing paragraphs 1 through 29 are incorporated by reference as if fully set forth herein.

31. During the calendar year 2011, Respondent processed chromium, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent

was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2012.

32. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2012.

33. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 5: Failure to Timely File TRI Form for Chromium for Reporting Year 2012

34. The foregoing paragraphs 1 through 33 are incorporated by reference as if fully set forth herein.

35. During the calendar year 2012, Respondent processed chromium, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2013.

36. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2013.

37. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 6: Failure to Timely File TRI Form for Chromium for Reporting Year 2013

38. The foregoing paragraphs 1 through 37 are incorporated by reference as if fully set forth herein.

39. During the calendar year 2013, Respondent processed chromium, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2014.

40. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2014.

41. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 7: Failure to Timely File TRI Form for Methanol for Reporting Year 2011

42. The foregoing paragraphs 1 through 41 are incorporated by reference as if fully set forth herein.

43. During the calendar year 2011, Respondent otherwise used methanol, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2012.

44. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2012.

45. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 8: Failure to Timely File TRI Form for Methanol for Reporting Year 2012

46. The foregoing paragraphs 1 through 45 are incorporated by reference as if fully set forth herein.

47. During the calendar year 2012, Respondent otherwise used methanol, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2013.

48. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2013.

49. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

IV. PROPOSED CIVIL PENALTY

50. 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 violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a). Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occur after January 12, 2009 are subject to up to \$37,500 per day of violation. In light of the above-referenced findings, EPA seeks to assess civil penalties of up to \$37,500 per day for the following EPCRA violations: 1) at least three violations of failing to file a TRI form for lead by the required deadlines in 2012, 2013, and 2014; 2) at least three violations of failing to file a TRI form for chromium by the required deadlines in 2012, 2013, and 2014; and 3) at least two violations of failing to file a TRI form for methanol by the required deadlines in 2012 and 2013.

Failure to report in a timely manner may deprive the community of its right to know about chemicals used or stored 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.

51. 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.

52. 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.

53. An appropriate penalty will be derived pursuant to the following penalty policy: “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). A copy of this penalty policy is enclosed with this Complaint. The policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case. Should the penalty policy be updated prior to a hearing on

the case, EPA reserves the right to use the new policy and shall provide the updated policy to Respondent.

54. The proposed penalty will be developed based upon the best information available to EPA at the time and may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the amount of the proposed penalty.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

55. 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.

56. 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.

57. 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

58. 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 David Peterson, the attorney assigned to represent EPA and who is designated to receive service in this matter at:

David Peterson
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES04-1)
Boston, MA 02109-3912
Tel: (617) 918-1891

59. 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.

VI. ELECTRONIC FILING

60. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with the Complaint.

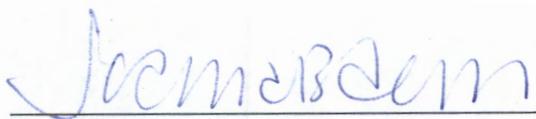
VII. SETTLEMENT CONFERENCE

61. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations and/or the amount of any penalty. 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. Where appropriate, the amount of any penalty may be modified to reflect any settlement agreement reached at such a conference.

62. 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 David Peterson, at (617) 918-1891 or peterson.david@epa.gov.

VIV. CONTINUED COMPLIANCE OBLIGATION

63. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with Section 313(a) of EPCRA, 42 U.S.C. 11023(a) and implementing regulations at 40 C.F.R. Part 372.

 Date: 9/30/15

Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

In the Matter of: Savage Arms, Inc., Docket No: EPCRA-01-2015-0056
Complaint and Notice of Opportunity for Hearing

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Wanda Rivera
Regional Hearing Clerk (RAA)
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, Massachusetts 02109 – 3912

Copy by Certified Mail,
Return Receipt Requested

Robert F. Kasper, President :
Savage Arms Inc.
100 Springdale Road
Westfield, MA 01085

Dated: _____

9/30/2015



David Peterson
Senior Enforcement Counsel
U.S. Environmental Protection Agency,
Region 1
5 Post Office Square, Suite 100 (OES 4-1)
Boston, Massachusetts 02109 – 3912
Tel (617) 918-1891
Electronic Fax (617) 918-0891