

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

EPA REGION 4

2010 APR 20 AM 9:52  
HEARING CLERK

IN THE MATTER OF: )  
 )  
Chem-Way Corporation )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. EPCRA-04-2010-2015

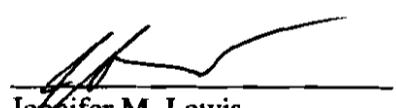
**UNOPPOSED MOTION TO AMEND COMPLAINANT'S INITIAL PREHEARING EXCHANGE**

Comes now Complainant, the United States Environmental Protection Agency (EPA) Region 4, by and through its counsel pursuant to Rule 22.16(a) of the Consolidated Rules of Practice (40 C.F.R. § 22.16(a)) and respectfully requests leave to amend its Initial Prehearing Exchange filed in this matter on April 16, 2010, and as grounds therefore states as follows:

Complainant's Initial Prehearing Exchange includes an incorrect caption. The caption should read "Chem-Way Corporation, Respondent." This motion seeks to correct the caption and makes no other changes to Complainant's Initial Prehearing Exchange.

Complainant requests that Complainant's Amended Initial Prehearing Exchange be deemed filed and served on Respondent on the date of the Order granting the Motion. Prior to filing this Motion, the undersigned contacted the opposing party as to the relief requested herein and Counsel for Respondent indicated that it does not oppose the Motion.

Complainant's Amended Initial Prehearing Exchange is attached to this Motion.

  
Jennifer M. Lewis  
Counsel for Complainant

4-20-2010  
Date

**CERTIFICATE OF SERVICE**

I certify that the foregoing Motion to Amend the Complainant's Initial Prehearing Exchange was sent this day in the following manner to the addressees listed below:

Original by Interoffice Mail to:

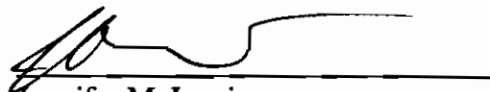
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth St., SW  
Atlanta, Georgia 30303

Copy by Certified Mail and facsimile to:

James W. Potter  
Counsel for Respondent  
Nexsen Pruet, LLC  
1239 Main Street  
Suite 700  
Columbia, South Carolina 29201

Copy by Pouch Mail and facsimile to:

The Honorable Susan L. Biro  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Ave., N.W.  
Mail Code 1900L  
Washington, DC 20005



Jennifer M. Lewis  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Dated: 7-20-2010

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

EPA REGION 4  
2010 APR 20 AM 9:53  
MEETING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
 )  
Chem-Way Corporation, ) Docket No. EPCRA-04-2010-2015  
 )  
Respondent. )  
\_\_\_\_\_ )

COMPLAINANT'S AMENDED INITIAL PREHEARING EXCHANGE

Comes now Complainant, by and through its counsel, and in response to the Prehearing Order issued in this matter by Chief Administrative Law Judge Susan L. Biro, respectfully submits its Prehearing Exchange pursuant to Section 22.19(a) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (Rules of Practice). For ease of review, this response is divided in a manner that reflects the style of the Prehearing Order.

**1. Complainant submits the following:**

(A) The names of all expert and other witnesses intended to be called at hearing, identifying each as a fact or expert witness, with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called:

Vinson Poole  
Compliance Inspector  
EPCRA Enforcement Section  
U.S. Environmental Protection Agency, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303

Mr. Poole is expected to testify as a fact witness, to his duties as a Compliance Inspector in EPA's EPCRA Enforcement Section. Mr. Poole is the case development officer and is expected to testify about his investigation of this matter, the violations alleged in the Complaint, and the development and preparation of the Complaint. In addition, Mr. Poole is expected to testify to the calculation of EPA's proposed penalty in this matter and provide the basis for concluding that the penalty proposed in the Complaint is the appropriate penalty for these violations.

Complainant respectfully reserves the right to call or not call the aforementioned potential witness, and to expand or otherwise modify the scope, extent, or areas of the testimony of the above mentioned witness, where appropriate. Complainant also respectfully reserves the right to supplement its witness list as authorized pursuant to 40 C.F.R. Section 22.19(f) with the Court's approval and upon adequate notice to Respondent. Complainant also reserves the right to call any or all of Respondent's witnesses at the hearing.

(B) Copies of all documents and exhibits intended to be introduced into evidence.

In addition to the Complaint and Respondent's Answer (copies of which have previously been filed with the Court and which all parties presently possess), incorporated herein by reference, EPA intends to offer into evidence the following documents, copies of which are marked for identification and attached. For the purposes of the list of documents below, "Complainant's Exhibit No." is abbreviated as "CX \_."

- CX 1. EPA's "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)
- CX 2. Complainant's EPCRA Penalty Calculation Narrative
- CX 3. EPA Region 4 EPCRA Inspection Report prepared by Mr. Poole (August 5, 2008)
- CX 4. EPA Receipt for Samples and Documents obtained during inspection (August 5, 2008)
- CX 5. EPA Notice of Inspection (August 5, 2008)
- CX 6. Dialog Report Chem-Way Corporation (October 5, 2009)
- CX 7. Email exchange between Garry McCormick, Battalion Chief, Charlotte Fire Department, and Mr. Poole (June 25, 2008)
- CX 8. Email exchange between Garry McCormick, Battalion Chief, Charlotte Fire Department, and Mr. Poole (January 6, 2009)
- CX 9. CFD Permit Renewal Hazardous Material Listing for Property (September 10, 2007)
- CX 10. CFD Permit Renewal Hazardous Material Listing for Property (October 1, 2005)
- CX 11. Letter from Mr. James W. Potter, Counsel for Chem-Way Corporation to Mr. Vinson Poole with Enclosures (September 4, 2008)

**CX 12. Information on North Carolina's Tier II Reporting Program**

Complainant anticipates the possibility that Complainant may need to introduce further evidence in response to issues which may be raised in Respondent's prehearing exchange. Complainant therefore respectfully reserves the right to supplement its exhibit list upon adequate notice to Respondent and to this Court. In addition, Complainant may request this Court to take official notice of appropriate matters in accordance with 40 C.F.R. § 22.22(f).

In the event EPA's continuing review of Respondent's documents, in preparation for this case, reveals additional violations, Complainant respectfully reserves the right, upon adequate notice to Respondent and this Court, to move for Amendment of the Complaint and for: (1) presentation of additional testimony substantiating such additional violations; and (2) introduction of additional documentary evidence substantiating such additional violations.

(C) A statement of Complainant's views on the appropriate place of hearing and an estimate of the amount of time needed to present its direct case.

Pursuant to 40 C.F.R. §§ 22.21(d) and 22.19(d), the hearing should be held in the county where the Respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, D.C.

Complainant prefers to have the hearing in Atlanta, Georgia (the relevant EPA Regional Office) however Complainant will agree to have the hearing in Charlotte, North Carolina (where the business which the hearing concerns is conducted). Complainant estimates that it will require approximately one-half day to present its case.

**2. In addition, Complainant submits the following:**

(A) A copy of the documents in support of the allegations in Paragraphs 10, 15 and 20 of the Complaint are attached as Exhibits CX 9 and 10.

(B)-(D) A copy of the documents in support of the allegations in Paragraph 11, 16 and 21 of the Complaint are attached as Exhibits CX 3, 7, 8, and 11.

(E) Complainant's statement explaining in detail the calculation of the proposed penalty, addressing each factor for determining a penalty in EPCRA Section 325 is attached as Exhibit CX 2.

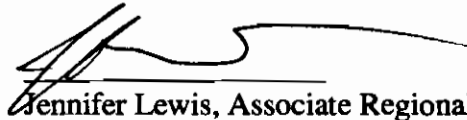
(F) A copy of EPA's "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act," September 30, 1999 is attached as Exhibit CX 1.

(G) Complainant's statement on the applicability of the Paperwork Reduction Act, 44 U.S.C. § 3501 *et. seq.*, to this proceeding, including whether there is a current Office of Management and Budget Control number involved and whether the provisions of Section 3512 of the PRA may apply to this case is as follows:

The Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et. seq.*, and specifically § 3512 is not an issue in this proceeding. To the extent the PRA is applicable to the information collection requirements required by 40 C.F.R. 370.25, the Office of Management and Budget (OMB) has approved such information collection requirements under the provisions of the PRA and has assigned the Information Collection Request OMB control number 2050-0072. Thus, the PRA does not bar enforcement of the regulatory violations of EPCRA alleged in the Complaint nor the imposition of penalties therefore.

Dated: April 20, 2010

Respectfully Submitted,



Jennifer Lewis, Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
Tel (404) 562-9518/Fax (404) 562-9486

**CERTIFICATE OF SERVICE**

I certify that the foregoing Complainants Amended Initial Prehearing Exchange, dated April 20, 2010, was sent this day in the following manner to the addressees listed below:

Original by Interoffice Mail to:

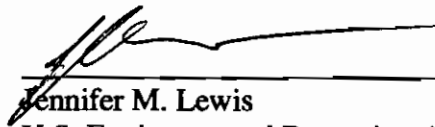
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth St., SW  
Atlanta, Georgia 30303

Copy by Certified Mail to:

James W. Potter  
Counsel for Respondent  
Nexsen Pruet, LLC  
1239 Main Street  
Suite 700  
Columbia, South Carolina 29201

Copy by Pouch Mail to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
Fax No. (202) 565-0044

  
\_\_\_\_\_  
Jennifer M. Lewis  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Dated: 4-20-2010