

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA REGION 5  
2009 AUG 28 PM 2:26

**In the Matter of:**

SuperClean Brands, Inc.  
St. Paul, Minnesota

**Respondent.**

**Docket No. EPCRA-05-2009-0016**

**COMPLAINANT'S MOTION FOR ACCELERATED DECISION AS TO LIABILITY**

Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA or Agency), Region 5, by and through her attorney, Terence Stanuch, hereby moves before the Presiding Officer, pursuant to 40 C.F.R. § 22.20 of 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, that an accelerated decision be entered in this matter finding Respondent liable for violations of Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA") 42 U.S.C. § 11023, and its implementing regulations at 40 C.F.R. Part 372, as set forth in Counts I through V of the Complaint.

**Introduction**

The Complaint alleged violations of Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and the Toxic Chemical Release Reporting Community Right-to-Know Rule at 40 C.F.R. Part 372, which was promulgated pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide, in part, that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees, is in Standard Industrial Classification (SIC) 20 through 39 and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c)

of EPCRA, 42 U.S. C. § 11023(c), and is listed at 40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S. C. § 11023(f), and in 40 C.F.R. §§ 372.25, 372.27 and 372.28. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require that persons who own or operate a facility subject to these requirements complete and submit to the Administrator of U.S. EPA, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) of EPCRA, 42 U.S. C. § 11023(g), for each toxic chemical listed under Section 313(c) of EPCRA, 42 U.S. C. § 11023(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), 42 U.S.C. § 11023(f). Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), U.S. EPA published a chemical release form for facility owners and operators to use entitled the Toxic Chemical Release Inventory Reporting Form, U.S. EPA Form 9350-1 (1-88) (Form R), which is codified at 40 C.F.R. § 372.85.

Pursuant to Sections 313(d) and 328 of EPCRA, 42 U.S.C. §§ 11023(d) and 11048, the Administrator published the Specific Toxic Chemical Listings, codified at 40 C.F.R. § 372.65, that were identified at Section 313(c) of EPCRA, 42 U.S. C. § 11023(c), and added to or deleted pursuant to Section 313(d) of EPCRA, 42 U.S. C. § 11023(d). A review of this toxic chemical listing indicates that ethylene glycol, CAS No. 107-21-1, and methanol, CAS No. 67-56-1, are both listed and had an effective date of January 1, 1987 for reporting under 40 C.F.R. § 372.30. Also, Section 313(f)(1)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(iii), states, in part, that a facility that processes more than the threshold amount 25,000 pounds of a toxic chemical in 1989, or in subsequent calendar years, must submit a toxic chemical release form under EPCRA.

Complainant avers that, based upon Respondent's Answer to the Administrative Complaint (Answer), none of the statutory and regulatory statements listed above are in dispute in this case because Respondent stated that the statute and regulations "speak for themselves." See Respondent's Answer at paragraphs 5, 6, 7, 8, 9 and 11.

### **Respondent's Admissions**

1. Respondent admitted that it is a corporation incorporated in the State of Minnesota. Answer at paragraph 14. As such, Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7). Respondent does not dispute that it is a "person" under EPCRA but states that the statutes and regulations "speak for themselves." Answer at paragraph 13.

2. Respondent admits that it owned or operated a facility located at 51 Maryland Avenue East, St. Paul, Minnesota (the Facility), during calendar years 2003, 2004 and 2005. Answer at paragraph 15.

3. Respondent admits that its Facility consisted of buildings, equipment and structures and other stationary items which were located on a single site or on contiguous or adjacent sites and which were owned by the same person, entity, or corporation. Answer at paragraph 16.

4. Respondent admits that during the calendar years 2003, 2004 and 2005, 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. Answer at paragraph 17.

5. Respondent admits that its Facility is covered by SIC Code 2842. Answer at paragraph 18.

### **Count I**

6. Respondent's admits that during the 2003 calendar year, Respondent's facility processed 34,000,000 pounds of methanol, CAS No. 67-56-1. Answer at paragraph 23.

7. Respondent does not dispute that it was required to submit to the U.S. EPA Administrator a Form R for methanol for the 2003 calendar year on or before July 1, 2004, but states that the statutes and regulations “speak for themselves.” Answer at paragraph 25.

8. Respondent admits that it did not submit to the U.S. EPA Administrator a Form R for methanol for the 2003 calendar year on or before July 1, 2004. Answer at paragraph 26.

### Count II

9. Respondent admits that during the 2004 calendar year, Respondent’s facility processed 29,000,000 pounds of methanol, CAS No. 67-56-1. Answer at paragraph 31.

10. Respondent does not dispute that it was required to submit to the U.S. EPA Administrator a Form R for methanol for the 2004 calendar year on or before July 1, 2005, but states that the statutes and regulations “speak for themselves.” Answer at paragraph 33.

11. Respondent admits that it did not submit to the U.S. EPA Administrator a Form R for methanol for the 2004 calendar year on or before July 1, 2005. Answer at paragraph 34.

### Count III

12. Respondent admits that during the 2005 calendar year, Respondent’s facility processed 31,400,000 pounds of methanol, CAS No. 67-56-1. Answer at paragraph 39.

13. Respondent does not dispute that it was required to submit to the U.S. EPA Administrator a Form R for methanol for the 2005 calendar year on or before July 1, 2006, but states that the statutes and regulations “speak for themselves.” Answer at paragraph 41.

14. Respondent admits that it did not submit to the U.S. EPA Administrator a Form R for methanol for the 2005 calendar year on or before July 1, 2006. Answer at paragraph 42.

#### Count IV

15. Respondent admits that during the 2004 calendar year, Respondent's facility processed 43,000 pounds of ethylene glycol, CAS No. 107-21-1. Answer at paragraph 47.

16. Respondent does not dispute that it was required to submit to the U.S. EPA Administrator a Form R for ethylene glycol for the 2004 calendar year on or before July 1, 2005, but states that the statutes and regulations "speak for themselves." Answer at paragraph 49.

17. Respondent admits that it did not submit to the U.S. EPA Administrator a Form R for ethylene glycol for the 2004 calendar year on or before July 1, 2005. Answer at paragraph 50.

#### Count V

18. Respondent admits that during the 2005 calendar year, Respondent's facility processed 86,000 pounds of ethylene glycol, CAS No. 107-21-1. Answer at paragraph 55.

19. Respondent does not dispute that it was required to submit to the U.S. EPA Administrator a Form R for ethylene glycol for the 2005 calendar year on or before July 1, 2006, but states that the statutes and regulations "speak for themselves." Answer at paragraph 57.

20. Respondent admits that it did not submit to the U.S. EPA Administrator a Form R for ethylene glycol for the 2005 calendar year on or before July 1, 2006. Answer at paragraph 58.

#### Legal Argument

Section 22.20(a) of the Consolidated Rules, 40 C.F.R. § 22.20(a), states, in part:

The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.

Also, the U.S. EPA Administrator, in a final decision of the Environmental Appeals Board, has held that "a person is not entitled to an evidentiary hearing unless that person puts a material

fact at issue.” Green Thumb Nursery, Inc., 1997 EPA App. LEXIS 4, \*25 (EAB, Mar. 6, 1997).

“[The] principle that one must raise actual, relevant, and material disputes of fact in order to obtain an evidentiary hearing is at the heart of all procedures for summary disposition, whether as to summary judgment in a judicial context, or as to administrative proceedings.” Id. at \*26.

As stated above, a person, who is the owner or operator of a facility, must complete and submit to the Administrator of U.S. EPA, no later than July 1, 1988 and each July 1 thereafter, a Form R chemical release form if the following elements are met:

1. The facility that must have 10 or more full-time employees;
2. The facility must be in SIC codes 20 through 39;
3. The facility must manufacture, import, process, or otherwise use;
4. A listed toxic chemical; and
5. In an amount, each calendar year, that exceeds the threshold for reporting.

If these elements are met, and the owner or operator of that facility is a person who has not submitted to the Administrator of U.S. EPA a Form R for each subject chemical no later than July 1 of the following calendar year, that owner or operator is liable for violating EPCRA and its implementing regulations. Respondent admits, based upon its own admissions as stated above, that it was required to timely submit Forms R for methanol for 2003, 2004 and 2005, and Forms R for ethylene glycol for 2004 and 2005, and that it failed to do so. Consequently, no genuine issue of material fact exists and Respondent should be found liable for violating EPCRA and its implementing regulations.

In its defense, Respondent has basically made two arguments that it should not be held liable for violating EPCRA. Respondent’s first defense is that it did not have any intent to not comply with EPCRA and that its “failure to submit reports was due to unique circumstances that

are not likely to recur.” Answer at 11, Respondent’s Initial Prehearing Exchange at 3. In support of this defense, Respondent further states that during the time period in question, the management of their facility was transitioned to a new staff, sales started to spike and they experienced astronomical growth, they experienced staff shortages, and that the person responsible for submitting the required Forms R was, himself, learning a new position. Id.

However, all of Respondent’s reasons to demonstrate a lack of intent to violate EPCRA are irrelevant in this matter because EPCRA has consistently been recognized as being a strict liability statute. Steeltech, Ltd. v. EPA, 273 F.3d 652, 653 (6th Cir. 2001)(EPCRA is a strict liability statute and defendant is liable for not submitting timely Forms R despite its lack of awareness of its reporting obligations); Arizona Environmental Container Corp., 2008 EPA ALJ LEXIS 34, \*37 (August 12, 2008)(noting that a violation of EPCRA Section 313 is a strict liability offense and respondent was liable for not submitting a timely Form R to the Federal Government despite submitting a timely Form R to the State and attempting to submit an electronic Form R to U.S. EPA); Green Thumb Nursery, Inc., at \*35 (EAB, 1997)(“The environmental statutes have long been construed as imposing strict liability for failure to meet their requirements.”); Firestone Pacific Foods, Inc., 2009 EPA ALJ LEXIS 5, \*113 (March 24, 2009)(“In this regard it is noted that EPCRA is a strict liability statute; “intent” is not an element of liability, . . . .”); Tube Methods, Inc., 2000 EPA ALJ LEXIS 61, \*4 (August 24, 2000)(“Lack of intent to violate the requirement is not a defense to liability, as EPCRA is a strict liability statute.”). Lay Brothers, Inc., 1999 EPA ALJ LEXIS 13, \*24 (March 12, 1999)(The court agreeing that EPCRA is a strict liability statute and that Respondent’s knowledge and intent are not relevant to the issue of liability.)

These cases further explain that “[t]he environmental statutes are intended to be action forcing, and brook no excuse for failure to achieve the required result.” Green Thumb Nursery at \*35. “Filing a Form R after the due date also is not a defense to liability.” Tube Methods at \*5. In Arizona Environmental Container, the court stressed that “[w]hat is relevant to a liability determination here is not Respondent’s intent to comply and/or the efforts it took to certify, but the ultimate effect of that intent and those efforts - whether they resulted in EPA having a certified Form R before the deadline.” Id. at \*37.

Consequently, Respondent’s first defense that its “failure to submit reports was due to unique circumstances that are not likely to recur” and that it did not have any intent to not comply with EPCRA is irrelevant. Courts have clearly and consistently ruled that EPCRA is a strict liability statute and that the reasons for failing to timely submit a Form R are irrelevant for determining whether that person is liable for not complying with EPCRA.

As its second defense, Respondent’s basically argues that the government should be estopped from “imposing or enforcing any civil penalties against [Respondent]” because: (a) the U.S. EPA inspector who inspected the facility on October 18, 2006, did not advise Respondent of any alleged violations which led Respondent to believe that “it was in compliance with environmental filing and permitting requirement.”; (b) the Minnesota Pollution Control Agency (“MPCA”) did not inform Respondent of any EPCRA violations in its September 7, 2005 Air Pollutant Emissions Inventory Report (Respondent’s Initial Prehearing Exchange, Exhibit 6); and (c) Respondent’s submittal of EPCRA Tier II forms contained very similar information to the required Forms R. Answer at 11, Respondent’s Initial Prehearing Exchange at 4.

It is a “well settled matter of law” that the equitable doctrine of estoppel may be applied against the Government only in the rarest circumstances, Lay Brothers, 1999 EPA ALJ LEXIS 13,



\*24, citing United States v. California, 332 U.S. 19, 39-40 (1947), and that estoppel is “an equitable doctrine invoked to avoid injustice in particular cases.” Firestone Pacific Foods, Inc., 2008 EPA ALJ LEXIS 19, \*27 (May 1, 2008). The elements of an estoppel defense are: “(a) a definitive misstatement or omission of fact made by one party to another with reason to believe that the other will rely upon it; and (b) the other party does in fact rely upon the misrepresentation to his detriment. For the reliance to be reasonable, the party claiming the estoppel defense must show that at the time it acted to its detriment, it did not have knowledge of the truth nor could such knowledge have been obtained with reasonable diligence.” Id. citing Heckler v. Community Health Service of Crawford County, Inc., 467 U.S. 51, 58 (1984). The 2008 Firestone Pacific court added that the defense of estoppel is rarely valid against the Federal Government. Id. at \*28, citing Heckler, 467 U.S. at 60-63; OPM v. Richmond, 496 U.S. 414, 422 (1990), reh’g denied, 497 U.S. 1046 (1990)(noting that the Supreme Court has reversed every finding of estoppel against the government by lower courts). The 2008 Firestone Pacific court also cited Tennessee Valley Authority, 9 E.A.D. 357, 415, 2000 EPA App. LEXIS 25, n. 56 (EAB 2000) to note that laches and estoppel defenses against the U.S. EPA typically fail as a matter of course, Id. at \*28, and quoted from the Supreme Court’s Heckler case:

“when the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined. It is for this reason that it is well settled that the Government may not be estopped on the same terms as any other litigant.” Heckler, 467 U.S. at 60.

The 2008 Firestone Pacific court continued to state that “it is well established that to prevail on an estoppel defense against the government, the proponent of the defense must not only prove the traditional elements but must also prove ‘affirmative misconduct’ by the government.” Id. at \*29, citing United States v. Marine Shale Processors, 81 F.3d 1329 (5th Cir. 1996); B.J.

Carney Indus., Inc., 7 E.A.D. 171, 196, 1997 EPA App. LEXIS 7 (EAB, 1997). Affirmative misconduct has been defined to mean a “deliberate lie” or “a pattern of false promises,” and does not include a government agent negligently providing misinformation. Id. at \*29, citing Socop-Gonzalez v. INS, 272 F.3d 1176, 1184 (9th Cir. 2001) and, *see also*, Schweiker v. Hansen, 450 U.S. 785, 789 (1981)(misinformation provided by a Government official does not rise to the level required by estoppel.”); FDIC v. Hulsey, 22 F.3d 1472, 1490 (10th Cir. 1994)(“The erroneous advice of a government agent does not reach the level of affirmative misconduct.”)

In the 2008 Firestone Pacific proceeding, a U.S. EPA inspector was alleged to have stated to the company that no action would be taken if the company submitted their EPCRA Emergency and Hazardous Chemical Inventory Form “soon.” Id. at \*3. The court ruled that the Firestone Pacific company’s estoppel argument failed because they did not demonstrate any affirmative misconduct on the part of the government inspector nor any detrimental reliance by the company. Id. at \*30.

In contrast, in the present matter, Respondent has not alleged that the U.S. EPA inspector who inspected the facility on October 18, 2006 made any statements to Respondent upon which they relied. Rather, Respondent alleges only that the inspector did not inform Respondent of any potential violations for Respondent not timely submitting the 2003, 2004 and 2005 Forms R for methanol, nor did he advise Respondent that it had to submit Forms R for ethylene glycol for 2004 and 2005. Respondent’s Initial Prehearing Exchange at 4.

First, it’s important to note that the October 18, 2006 inspection was obviously after July 1, 2006, the due date for Respondent’s submittal of its 2005 Form R for methanol and well past the due dates for submitting Forms R for methanol for 2003 and 2004. Even if the U.S. EPA inspector had noticed that Respondent’s Forms R for methanol for 2003, 2004 and 2005 had been

submitted after the required due dates, Respondent was already in violation of these EPCRA requirements. Also, at the time of the inspection, there was no way for the U.S. EPA inspector to be certain that Respondent was required to submit Forms R for ethylene glycol for 2004 and 2005. The Agency can make such a determination only after reviewing Respondent's chemical usage records and calculating whether the reporting threshold has been exceeded.

Also, Respondent's claim that it "learned that Forms R for ethylene glycol for calendar years 2004 and 2005 were not filed" "[d]uring the investigation of the Agency's Notice," Respondent's March 13, 2009 letter to U.S. EPA, Complainant's Initial Prehearing Exchange, Exhibit No. 1, is a bit misleading. During the closing conference of the October 27, 2005 U.S. EPA inspection of Respondent's Facility, the U.S. EPA inspector informed Gene Jensen, Respondent's representative, that:

"there was a possibility that [Respondent] should be reporting for ethylene glycol. [The inspector] recommended that Mr. Jensen review the records, and if in his opinion [Respondent] should have filed for the preceding years, [Respondent] should file a report.

Mr. Jensen was shown how to find reporting information on the EPA web site." Complainant's Initial Prehearing Exchange, Exhibit No. 15, page 6.

Respondent was already on notice in October 2005 that it might have to submit Forms R for its ethylene glycol use but apparently didn't follow-up on this advice. Regardless, the due date for submitting Forms R for ethylene glycol for 2004 and 2005 was also before the October 18, 2006 inspection.

There is no injustice in this matter. Respondent cannot claim that they detrimentally relied upon a definitive misstatement or omission of fact made by the U.S. EPA inspector because all the alleged violations had already occurred before the October 18, 2006 inspection. Consequently, the U.S. EPA should not be estopped from proceeding with this enforcement action.

Respondent also contends that the September 7, 2005 Air Pollutant Emissions Inventory Report from the Minnesota Pollution Control Agency gave no indication that Respondent “somehow failed to comply with environmental compliance requirements” and, therefore, “had no reason to believe there was anything to correct, voluntarily report, or otherwise needed [sic] bring itself into compliance.” Respondent’s Initial Prehearing Exchange at 5.

As discussed in Complainant’s Rebuttal Prehearing Exchange, page 6, the very first sentence of this letter states that “[t]he purpose of this letter is to inform you [i.e. Respondent] that the Minnesota Pollution Control Agency (MPCA) staff considers the method of calculating Hazardous Air Pollutants (HAP) emissions from your facility described in Wenck’s technical memorandum dated August 30, 2005, acceptable.” The next sentence then requests Respondent to submit an application for a Capped Air Permit by October 3, 2005.

It’s very clear from this letter that its only purpose is to inform Respondent that its method of calculating HAPs is acceptable. There is nothing in this letter which even mentions EPCRA or Form R, or informs Respondent that it is in compliance with any environmental statute or regulation. This letter is simply a follow-up to an ongoing discussion between Respondent and MPCA regarding the need for Respondent to obtain an air permit. This letter has absolutely nothing to do with the violations alleged in the Complaint.

Finally, Respondent claims that since it had already been filing annual Tier II reports pursuant to EPCRA (formally known as the Emergency and Hazardous Chemical Inventory Form, see 40 C.F.R. § 370.41), and that these Tier II reports contain very similar information to that which would have been included on the required Forms R that Respondent failed to submit, the public purpose of EPCRA was met, the public was thoroughly informed, and the risk of harm

to the community for delayed and missing filings was extremely low. Respondent's Initial Prehearing Exchange at 5. However, as discussed in Complainant's Rebuttal Prehearing Exchange, page 7, Respondent fails to acknowledge that Tier II forms and Forms R have two very different purposes.

Tier II forms provide information to state and local emergency planning agencies, and local fire departments, of the chemicals present in regulated facilities. For any hazardous chemical used or stored in a workplace, facilities must maintain a material safety data sheet (MSDS) and submit that MSDS (or a list of the chemicals) to their State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and local fire department. Facilities must also report an annual inventory of these chemicals by March 1 of each year to their SERC, LEPC and local fire department. Tier II forms provide the public "with important information on the hazardous chemicals in their communities for the purpose of enhancing community awareness of chemical hazards and facilitating development of State and local emergency response plans." 40 C.F.R. § 370.1. Tier II information is critical so that emergency responders are aware of the hazards associated with the chemicals they are dealing with.

In contrast, Forms R are submitted to report on the actual emissions of chemicals from a facility to our ambient air, water and land, in other words, to the environment as a whole. Information from Forms R is "intended to inform the general public and the communities surrounding covered facilities about releases of toxic chemicals, to assist research, to aid in the development of regulations, guidelines, and standards, and for other purposes." 40 C.F.R. § 372.1. Even though Tier II reports must be made available to the public, they do not inform anyone as to what chemicals a regulated facility is actually emitting into the environment.

Respondent contends that "the risk of harm to the community for delayed and missing filings was extremely low." Respondent's Initial Rebuttal Hearing Exchange at 5. This is misleading because the purpose of a Form R is not to describe or explain the risk of harm posed to a community, but to provide the community with appropriate and sufficient information so that the community can determine for itself whether it is at risk from exposure to these chemical emissions. Delayed or missing filings are completely contrary to the purposes of the Emergency Planning and *Community-Right-to-Know* Act (emphasis added) because a community cannot make an informed decision about its risk from these chemicals if the information, to which it has a right-to-know, is either outdated or just plain missing. Providing timely information is necessary to fulfill the purpose and intent of EPCRA. "[F]ailure to comply with the [Form R] reporting provisions of Section 313(a) [of EPCRA] seriously impairs the public's right-to-know, as well as the Federal and state government's ability to respond to releases of toxic chemicals." Arizona Environmental Container, at \*33, citing TRA Indus. Inc., EPA ALJ LEXIS 82, \*6 (Oct. 11, 1996). Finally, even if Respondent argued that its Tier II submittals should somehow be construed to be substantial compliance with EPCRA, the Arizona Environmental Container court (which was another EPCRA Form R case) ruled that substantial compliance with the requirements of EPCRA did not alleviate Respondent of liability in that matter, Id. at \*34, and it should not alleviate Respondent of liability in this matter.

In summary, Respondent's belief "that the proposed penalty should be reduced or eliminated," Respondent's Initial Prehearing Exchange at 6, is inapplicable because EPCRA is a strict liability statute and Respondent's reasons for not complying with EPCRA are simply irrelevant for purposes of determining whether it is liable for these alleged violations. At most, "some of the 'defenses' raised by Respondent may be more appropriately considered in the

determination of the appropriateness of the proposed penalty.” Lay Brothers, at \*24 (an EPCRA reporting case in which the Respondent asserted several defenses such as having an exemplary environmental record and consistently making good faith efforts to comply with all applicable environmental regulations.)


### **Paperwork Reduction Act**

As discussed in Complainant’s Initial Prehearing Exchange, page 15, Complainant avers that the Paperwork Reduction Act does not negatively affect this proceeding.

### **Conclusion**

For the reasons set forth above, Complainant requests that the Presiding Officer issue an initial decision in this matter, on an accelerated basis as provided for in 40 C.F.R. § 22.20(a), finding that there are no genuine issues of material fact that exist as to Respondent’s liability for each of the violations alleged in Counts I through V of the Complaint and that Respondent is liable for these violations.

Respectfully Submitted,

  
Terence Stanuch  
Associate Regional Counsel

Office of Regional Counsel (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590  
Phone: (312) 886-8044  
stanuch.terry@epa.gov

In the Matter of: SuperClean Brands, Inc., Respondent  
Docket No. EPCRA-05-2009-016

RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA REGION 5

2009 AUG 28 PM 2: 24

**CERTIFICATE OF SERVICE**

I hereby certify that the original and one copy of Complainant's Motion to Amend its Initial Prehearing Exchange, Complainant's Motion for Accelerated Decision as to Liability, and Complainant's Motion for Accelerated Decision as to Penalty, all regarding: In the Matter of: SuperClean Brands, Inc., Docket No. EPCRA-05-2009-016, were filed with the Regional Hearing Clerk, U.S. EPA, Region 5, on August 28, 2009, and that copies were sent this day in the following manner to the addressees listed below:

Copy by government pouch mail to:

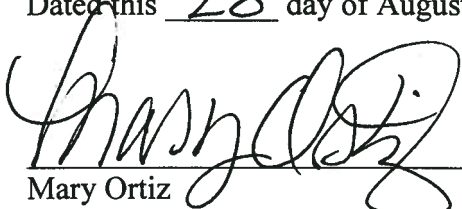
The Honorable Susan L. Biro  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

Copy by regular U.S. mail to:

Attorney for Respondent:

Sherry L. Stenerson, Esq.  
General Counsel  
SuperClean Brands, Inc.  
1380 Corporate Center Curve, Suite 200  
Eagan, MN 55121

Dated this 28 day of August 2009.



Mary Ortiz  
Administrative Program Assistant  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
Chicago, Illinois