



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

JUN 17 2005

REPLY TO THE ATTENTION OF:

SC-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Paul Loes  
President  
Loes Enterprises, Inc.  
1457 Iglehart Avenue  
St. Paul, MN 55104

Re: In the Matter of Loes Enterprises, Inc., St. Paul, Minnesota  
Docket No: ~~EPCRA-05-~~ 2005 0018

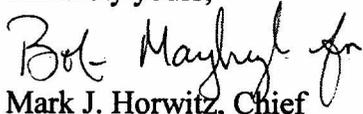
Dear Mr. Loes:

I have enclosed a Complaint filed against Loes Enterprises, Inc., under Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045. The Complaint alleges violations of Sections 312 of EPCRA, 42 U.S.C. § 11022.

As provided in the Complaint, if you would like 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 within 30 days of your receipt of this Complaint, the Presiding Officer may issue a default order 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. If you wish to request a conference, or if you have any questions about this matter, please contact Ruth McNamara, Office of Chemical Emergency Preparedness and Prevention at (312)353-3193. If you have any legal questions contact Jeffery Trevino, Associate Regional Counsel at (312)886-6729.

Sincerely yours,



Mark J. Horwitz, Chief  
Office of Chemical Emergency  
Preparedness and Prevention

Enclosures (3) Administrative Complaint  
Enforcement Response Policy  
Civil Administrative Rules of Practice

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

RECEIVED  
REGIONAL HEARING  
REGION V

RECEIVED  
REGIONAL HEARING  
CLEAR

In the Matter of:

Loes Enterprises, Inc.  
1457 Iglehart Ave  
St. Paul, Minnesota 55104

05 JUN 17 10 22:29

Docket No. EPCRA-95-2005 0018

ADMINISTRATIVE COMPLAINT

05 JUN 17 10 22:25

Respondent.

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

**COMPLAINT**

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

2. The Complainant is, by lawful delegation, the Chief of the Office of Chemical Emergency Preparedness and Prevention, Superfund Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Loes Enterprises, Inc., a corporation doing business in Minnesota.

**GENERAL ALLEGATIONS**

4. Respondent is a corporation incorporated in the State of Minnesota.

5. Respondent is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

6. Respondent operates a facility located at 1457 Iglehart Avenue, St. Paul, Minnesota 55104 (facility).

7. Respondent's facility consists of buildings, equipment and structures which are located on a single site or on

contiguous or adjacent sites and which are owned by the same person, entity, or corporation.

8. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

9. Respondent owned or operated the facility during calendar years 2001 thru 2003.

10. Minnesota State Emergency Planning Committee was the state emergency response commission (SERC) for Minnesota, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

11. Di (2-ethylhexyl) phthalate, polyvinyl chloride resin, calcium carbonate, and barium sulfate are "hazardous chemicals" as that term is defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

12. Phthalate esters are "extremely hazardous substances" under Section 302 of EPCRA, 42 U.S.C. § 11002, with a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

13. During at least one period of time in calendar years 2001 thru 2003, di(2-ethylhexyl) phthalate, polyvinyl chloride, calcium carbonate, barium sulfate, and phthalate esters were present at the facility in an amount equal to or greater than the minimum threshold level.

14. Respondent was an employer at the facility during the relevant time period described in this Complaint.

15. Calcium carbonate and barium sulfate are listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. § 1910.1000, Table Z-1.

16. Respondent is required by the Occupational Safety and Health Administration (OSHA) to prepare, or have available, a Material Safety Data Sheet (MSDS) for di(2-ethylhexyl) phthalate, polyvinyl chloride, calcium carbonate, barium sulfate, and phthalate esters.

**Count 1**

17. Complainant incorporates paragraphs 1 through 16 of this Complaint as if set forth in this paragraph.

18. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by OSHA to prepare or have available an MSDS for a hazardous chemical, to submit to the SERC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, a completed Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the

facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355 Appendices A and B, whichever is lower.

19. Respondent did not submit to the SERC and fire department a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2002 until August 24, 2004.

20. Respondent's failure to submit to the SERC and fire department a completed Emergency and Hazardous Chemical Inventory Form including di(2-ethylhexyl) phthalate, polyvinyl chloride, calcium carbonate, barium sulfate, and phthalate esters, by March 1, 2003, for calendar year 2002 violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 2**

21. Complainant incorporates paragraphs 1 through 16 of this Complaint as if set forth in this paragraph.

22. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by OSHA to prepare or have available an MSDS for a hazardous chemical, to submit to the SERC by March 1, 1988, and annually thereafter, a completed Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during

the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355 Appendices A and B, whichever is lower.

23. Respondent did not submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2003 until August 24, 2004.

24. Respondent's failure to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including di(2-ethylhexyl) phthalate, polyvinyl chloride, calcium carbonate, barium sulfate, and phthalate esters, by March 1, 2004, for calendar year 2003 violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 3**

25. Complainant incorporates paragraphs 1 through 16 of this Complaint as if set forth in this paragraph.

26. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by OSHA to prepare or have available an MSDS for a hazardous chemical, to submit to the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, a completed Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40

C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355 Appendices A and B, whichever is lower.

27. At all times relevant to this Complaint, the St. Paul Fire Department was the fire department with jurisdiction over the facility.

28. Respondent did not submit to the fire department a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2003 until August 27, 2004.

29. Respondent's failure to submit to the fire department a completed Emergency and Hazardous Chemical Inventory Form including di(2-ethylhexyl) phthalate, polyvinyl chloride, calcium carbonate, barium sulfate, and phthalate esters by March 1, 2004 for calendar year 2003 violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**PROPOSED EPCRA PENALTY**

Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for each Section 312 violation that occurred before

January 31, 1997. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$27,500 per day of violation for EPCRA 312 violations that occur on or after January 31, 1997, and to \$32,500 per day for violations that occur after March 15, 2004.

Based upon an evaluation of the facts alleged in this Complaint, and after considering the nature, circumstances, extent and gravity of the violations, the violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violations, and any other matters that justice requires, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$114,877 for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various EPCRA counts of this complaint as follows:

Count 1	EPCRA Section 312(a) (SERC & fire dept.):	\$ 1,275
Count 2	EPCRA Section 312(a) (SERC):	\$56,801
Count 3	EPCRA Section 312(a) (fire dept.):	\$56,801

TOTAL EPCRA SECTION 325 PENALTY \$114,877

Complainant calculated these penalties by evaluating the facts and circumstances of this case with specific reference to 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 (dated September 30, 1999)," 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) at 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.

**TERMS OF PAYMENT**

Respondent may pay the proposed penalty for the EPCRA violations by sending a certified or cashier's check, payable to the "Treasurer, United States of America," to:

U.S. EPA Region 5  
Attn.: Finance  
P.O. Box 70753  
Chicago, Illinois 60673

The EPCRA check must reference the name, and the docket number of this Complaint. Respondent must send a copy of the EPCRA check to:

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

Ruth McNamara  
Office of Chemical Emergency Preparedness  
and Prevention (SC-6J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

If Respondent contests any material fact alleged in this Complaint or the appropriateness of any penalty amount, 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.

Respondent must send any answer, with or without a request for hearing, to:

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

Respondent must send a copy of its answer and copies of all other documents that Respondent files in this action to:

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

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.

In addition, a default penalty is subject to interest, penalty and handling charges as set forth in the Federal Claims Collection Act, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. After 30 days, U.S. EPA will impose a late payment handling charge of \$15 for each 30-day period over which an unpaid balance remains. In addition, EPA will apply a six percent, per year penalty on any principal amount not paid within 90 days of the effective date of the default order.

Under EPCRA Section 325(f), 42 U.S.C. § 11045(f), Respondent may obtain review of any final order relating to the EPCRA violations alleged in this Complaint by filing a notice of appeal in the appropriate District Court of the United States within 30 days after the final order is issued and by simultaneously sending a copy of the notice by certified mail to the EPA Administrator.

#### **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:

Ruth McNamara  
Office of Chemical Emergency Preparedness  
and Prevention (SC-6J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
(312)353-3193

RECEIVED  
REGIONAL HEARING  
CLERK

'05 JUN 17 P2:26

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

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 an informal settlement conference and the adjudicatory hearing process.

EPA encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through informal conference. However, EPA will not reduce the penalty simply because the parties hold an informal settlement conference.

Date: 6/17/05

Bob Magel Jr  
Mark J. Horwitz, Chief  
Office of Chemical Emergency  
Preparedness and Prevention  
Superfund Division  
U.S. EPA Region 5

In the Matter of Loes Enterprises, Inc., St. Paul, Minnesota  
Administrative Complaint - Sections 312 of EPCRA

Docket No.: ~~EPCRA-05-~~ 2005 0018

In the Matter of Loes Enterprises, Inc., St. Paul, Minnesota  
DOCKET NO.: ~~EPCRA-05-2005-0018~~

RECEIVED  
REGIONAL HEARING  
CLERK

**CERTIFICATE OF SERVICE**

I certify that I filed one original and one copy of ~~05 June 17 2005~~ Administrative Complaint this day with the Regional Hearing Clerk (E-19J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I sent a copy to the Respondent via Certified Mail, Return Receipt Requested, along with the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, and the Enforcement Response Policy, at the following address:

Paul Loes, President  
Loes Enterprises, Inc.  
1457 Iglehart Avenue  
St. Paul, MN 55104

Date:

June 17, 2005

Ruth McNamara

Ruth McNamara  
Office of Chemical Emergency  
Preparedness and Prevention (SC-6J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604