

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:)
)
SuperClean Brands, Inc.)
St. Paul, Minnesota) Docket No. EPCRA-05-2009-0016
)
Respondent.)
_____)

STIPULATED FACTS, EXHIBITS and TESTIMONY

Pursuant to the Courts's August 4, 2009 Order Scheduling Hearing, the parties hereby agree that the following is true:

Stipulated Facts:

General Stipulations

1. The U.S. EPA lawfully promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rule at 40 C.F.R. Part 372 pursuant to the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).
2. 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) 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.
3. 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 U.S. EPA, 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).

4. The U.S. EPA published the Toxic Chemical Release Inventory Reporting Form, U.S. EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R. § 372.85 pursuant to EPCRA.

5. All Form R submittals must be sent to the following address:

TRI Data Processing Center
P.O. Box 1513
Lanham, MD 20703-1513
Attn: Toxic Chemical Release Inventory

6. Sections 325(c)(1) and (3) of EPCRA, 42 U.S.C. §§ 11045(c)(1) and (3), authorize the Administrator of U.S. 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, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. Consequently, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 that occurred after March 15, 2004, and \$37,500 per day for each violation of Section 313 that occurs after January 12, 2009, pursuant to Sections 325(c)(1) and (3) of EPCRA, 42 U.S.C. §§ 11045(c)(1) and (3), and 40 C.F.R. Part 19.

7. Respondent is a corporation incorporated in the State of Minnesota and, therefore, is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

8. Respondent owned or operated a facility located at 51 Maryland Avenue East, St. Paul, Minnesota, during calendar years 2003, 2004 and 2005.

9. Respondent's 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.

10. 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.

11. Respondent's facility is covered by SIC Code 2842.

12. Methanol, CAS No. 67-56-1, is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

13. Ethylene glycol, CAS No. 107-21-1, is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

14. The provisions of the Paperwork Reduction Act do not negatively affect this proceeding.

15. That 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, govern this proceeding.

Count I

16. The reporting threshold for methanol that is processed during the 2003 calendar year is 25,000 pounds.

17. During the 2003 calendar year, Respondent's facility processed 34,000,000 pounds of methanol.

18. Respondent was required to submit to the Administrator of U.S. EPA a Form R for methanol for the 2003 calendar year on or before July 1, 2004.

19. Respondent did not submit to the Administrator of U.S. EPA a Form R for methanol for the 2003 calendar year on or before July 1, 2004.

Count II

20. The reporting threshold for methanol that is processed during the 2004 calendar year is 25,000 pounds.

21. During the 2004 calendar year, Respondent's facility processed 29,000,000 pounds of methanol.

22. Respondent was required to submit to the Administrator of U.S. EPA a Form R for methanol for the 2004 calendar year on or before July 1, 2005.

23. Respondent did not submit to the Administrator of U.S. EPA a Form R for methanol for the 2004 calendar year on or before July 1, 2005.

24. Respondent submitted to the Administrator of U.S. EPA a Form R for methanol for the 2004 calendar year, on September 30, 2005.

Count III

25. The reporting threshold for methanol that is processed during the 2005 calendar year is 25,000 pounds.

26. During the 2005 calendar year, Respondent's facility processed 31,400,000 pounds of methanol.

27. Respondent was required to submit to the Administrator of U.S. EPA a Form R for methanol for the 2005 calendar year on or before July 1, 2006.

28. Respondent did not submit to the Administrator of U.S. EPA a Form R for methanol for the 2005 calendar year on or before July 1, 2006.

29. Respondent submitted to the Administrator of U.S. EPA a Form R for methanol for the 2005 calendar year, on October 17, 2006.

Count IV

30. The reporting threshold for ethylene glycol that is processed during the 2004 calendar year is 25,000 pounds.

31. During the 2004 calendar year, Respondent's facility processed 43,000 pounds of ethylene glycol.

32. Respondent was required to submit to the Administrator of U.S. EPA a Form R for ethylene glycol for the 2004 calendar year on or before July 1, 2005.

33. Respondent did not submit to the Administrator of U.S. EPA a Form R for ethylene glycol, for the 2004 calendar year, on or before July 1, 2005.

34. Respondent submitted to the Administrator of U.S. EPA a Form R for ethylene glycol, for the 2004 calendar year, on June 10, 2008.

Count V

35. The reporting threshold for ethylene glycol that is processed during the 2005 calendar year is 25,000 pounds.

36. During the 2005 calendar year, Respondent's facility processed 86,000 pounds of ethylene glycol.

37. Respondent was required to submit to the Administrator of U.S. EPA a Form R for ethylene glycol, for the 2005 calendar year, on or before July 1, 2006.

38. Respondent did not submit to the Administrator of U.S. EPA a Form R for ethylene glycol, for the 2005 calendar year, on or before July 1, 2006.

39. Respondent submitted to the Administrator of U.S. EPA a Form R for ethylene glycol, for the 2005 calendar year, on June 10, 2008.

Stipulated Exhibits:

1. Respondent's March 13, 2008 "Response to Notice of Intent to File Civil Administrative Complaint; SuperClean Brands, Inc. - St. Paul, Minnesota" to Terry Stanuch of the U.S. EPA, a/k/a Complainant's Exhibit No. 1.

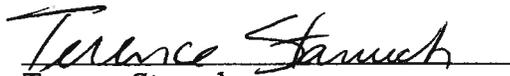
2. Respondent's Form R for methanol for reporting year 2003, dated October [day uncertain], 2004, a/k/a Complainant's Exhibit No. 2
3. Respondent's June 13, 2008 email to Terence Bonace of the U.S. EPA stating that the proof of service for Respondent's Form R for methanol for reporting year 2003 is attached to the email, a/k/a Complainant's Exhibit No. 3.
4. Respondent's alleged proof of service for Form R for methanol for reporting year 2003, dated October 3, 2005, that was attached to Respondent's June 13, 2008 email, a/k/a Complainant's Exhibit No. 4.
5. Respondent's May 26, 2009 email to Terry Stanuch which contained as an attachment a March 12, 2009 Data Base Verification regarding Respondent's Form R for methanol for reporting year 2003, a/k/a Complainant's Exhibit No. 7.
6. The March 12, 2009 Chemical Report Summary from Data Base Verification, a/k/a Complainant's Exhibit No. 8.
7. A June 9, 2009 Certified Statement from Tonya J. Richardson of U.S. EPA's Toxics Release Inventory Information Outreach Branch, a/k/a Complainant's Exhibit No. 9.
8. Respondent's Form R for methanol for reporting year 2004, dated September 30, 2005, a/k/a Complainant's Exhibit No. 10.
9. Respondent's Form R for methanol for reporting year 2005, dated October 17, 2006, a/k/a Complainant's Exhibit No. 11.
10. Respondent's Form R for ethylene glycol for reporting year 2004, dated June 10, 2008, a/k/a Complainant's Exhibit No. 12.
11. Respondent's Form R for ethylene glycol for reporting year 2005, dated June 10, 2008, a/k/a Complainant's Exhibit No. 13.
12. Complainant's penalty calculation worksheet, a/k/a Complainant's Exhibit No. 14.

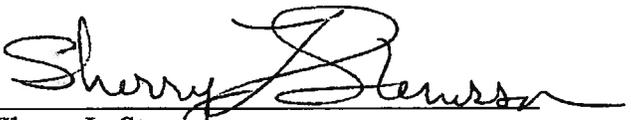
13. Complainant's October 27, 2005 inspection report of Respondent's facility, a/k/a Complainant's Exhibit No. 15.
14. Complainant's October 18, 2006 inspection report of Respondent's facility, a/k/a Complainant's Exhibit No. 16.
15. Notice of Inspection from the October 18, 2006 U.S. EPA inspection of Respondent's facility, a/k/a Complainant's Rebuttal Exhibit No. 2.
16. U.S. 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)(April 12, 2001), a/k/a Complainant's Exhibit No. 18.
17. U.S. EPA June 5, 2006 "Memorandum - Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule," a/k/a Complainant's Exhibit No. 19.
18. Administrative Complaint - In the Matter of: SuperClean Brands, Inc. dba Fox Packaging Company, St. Paul, Minnesota; Docket No. EPCRA-05-2007-0013; filed on April 13, 2007, a/k/a Complainant's Exhibit No. 20.
19. Consent Agreement and Final Order - In the Matter of: SuperClean Brands, Inc. dba Fox Packaging Company, St. Paul, Minnesota; Docket No. EPCRA-05-2007-0013; filed on December 12, 2007, a/k/a Complainant's Exhibit No. 21.
20. Cover sheet and page 18 from U.S. EPA's Toxic Chemical Release Inventory Reporting Forms and Instructions - Revised 2003 Version, a/k/a Complainant's Exhibit No. 23.
21. Section A.7.c of the Toxic Chemical Release Inventory Reporting Forms and Instructions, Revised 2003 Version, a/k/a Complainant's Rebuttal Exhibit No. 1.
22. Cover sheet and page 19 from U.S. EPA's Toxic Chemical Release Inventory Reporting Forms and Instructions - Revised 2004 Version, a/k/a Complainant's Exhibit No. 24.
23. Cover sheet and page 21 from U.S. EPA's Toxic Chemical Release Inventory Reporting Forms and Instructions - Revised 2005 Version, a/k/a Complainant's Exhibit No. 25.

Stipulated Testimony:

The Parties do not stipulate to any testimony that will be presented at hearing.

Respectfully Submitted,


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


Sherry L. Stenerson
General Counsel for SuperClean Brands, Inc.
1380 Corporate Center Curve, Suite 200
Eagan, Minnesota 55121
(651) 405-7718
s.stenerson@fmpco.com

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

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CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Stipulated Facts, Exhibits and Testimony regarding: In the Matter of: SuperClean Brands, Inc., Docket No. EPCRA-05-2009-016, was filed with the Regional Hearing Clerk, U.S. EPA, Region 5, on August 31, 2009, and that copies were sent this day in the following manner to the addressees listed below:

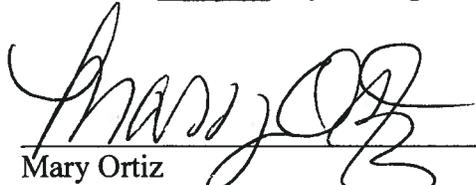
Copies sent by U.S. Postal Service, Certified Mail, Return Receipt Requested:

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

Attorney for Respondent:

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

Dated this 31 day of August 2009.



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