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9
10 UNITED STATES
11 ENVIRONMENTAL PROTECTION AGENCY
12 REGION 9
13 75 HAWTHORNE STREET
14 SAN FRANCISCO, CA 94105

15 _____)
16 In the Matter of:)

Docket No. EPCRA-09-2007-0029

17 Rockford Corporation)

FIRST AMENDED COMPLAINT AND
NOTICE OF OPPORTUNITY FOR HEARING

18 Respondent.)

19 PRELIMINARY STATEMENT

20 This is a civil administrative action instituted pursuant to
21 Section 325(c) of Title III of the Superfund Amendments and
22 Reauthorization Act, 42 U.S.C. §§ 11001 et seq., also known as
23 the Emergency Planning and Community Right-to-Know Act of 1986
24 ("EPCRA"), for violation of Section 313 of EPCRA, 42 U.S.C.
25 § 11023, and the federal regulations promulgated to implement
26 Section 313 at 40 C.F.R Part 372. Complainant is the Director of
27 the Communities and Ecosystems Division, United States
28 Environmental Protection Agency, Region 9 ("EPA"), who has been
duly delegated the authority to bring this action. Respondent is
Rockford Corporation. This First Amended Complaint and Notice of
Opportunity for Hearing ("Amended Complaint") serves as notice
that Complainant finds that Respondent violated Section 313 of
EPCRA, 42 U.S.C. § 11023, and the federal regulations promulgated
to implement Section 313 at 40 C.F.R Part 372.

1 primarily engaged in solvent recovery services on a contract or
2 fee basis); and that manufactures, processes, or otherwise uses
3 one or more toxic chemicals listed under Section 313(c) of EPCRA
4 and 40 C.F.R. § 372.65 in quantities in excess of the applicable
5 thresholds established under EPCRA Section 313(f) and 40 C.F.R.
6 §§ 372.25 and 372.28.

7 **GENERAL ALLEGATIONS**

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

10 5. At all times relevant to this Amended Complaint,
11 Respondent was an owner and operator of a "facility," as that
12 term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4)
13 and 40 C.F.R. § 372.3, which is located at 546 S. Rockford Drive,
14 Tempe, Arizona (hereinafter "Facility").

15 6. At all times relevant to this Amended Complaint, the
16 Facility had 10 or more "full-time employees," as that term is
17 defined at 40 C.F.R. § 372.3.

18 7. The Facility is classified in Standard Industrial
19 Classification code 3651, which falls within the Standard
20 Industrial Classification code 36.

21 **COUNT I**

22 **Failure to File Timely Form R for Lead Compounds for Calendar
23 Year 2002**

24 8. Paragraphs 1 through 7 are realleged and incorporated
25 herein by reference.

26 9. During calendar year 2002, Respondent processed
27 approximately 21,917 pounds of lead compounds, a chemical

1 category listed under 40 C.F.R. § 372.65.

2 10. The quantity of lead compounds that Respondent processed
3 at the Facility during calendar year 2002 exceeds the established
4 threshold of 100 pounds set forth at 40 C.F.R. § 372.28.

5 11. Respondent failed to submit a Form R for lead compounds
6 to the EPA Administrator and to the State of Arizona on or before
7 July 1, 2003.

8 12. Respondent's failure to submit a timely Form R for lead
9 compounds that Respondent processed at the Facility during
10 calendar year 2002 constitutes a violation of Section 313 of
11 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

12 **COUNT II**

13 **Failure to File Timely Form R for Lead Compounds for Calendar**
14 **Year 2003**

15 13. Paragraphs 1 through 7 are realleged and incorporated
16 herein by reference.

17 14. During calendar year 2003, Respondent processed
18 approximately 25,996 pounds of lead compounds, a chemical
19 category listed under 40 C.F.R. § 372.65.

20 15. The quantity of lead compounds that Respondent processed
21 at the Facility during calendar year 2003 exceeds the established
22 threshold of 100 pounds set forth at 40 C.F.R. § 372.28.

23 16. Respondent failed to submit a Form R for lead compounds
24 to the EPA Administrator and to the State of Arizona on or before
25 July 1, 2004.

26 17. Respondent's failure to submit a timely Form R for lead
27 compounds that Respondent processed at the Facility during

1 calendar year 2003 constitutes a violation of Section 313 of
2 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

3 **COUNT III**

4 **Failure to File Timely Form R for Lead Compounds for Calendar**
5 **Year 2004**

6 18. Paragraphs 1 through 7 are realleged and incorporated
7 herein by reference.

8 19. During calendar year 2004, Respondent processed
9 approximately 20,796 pounds of lead compounds, a chemical
10 category listed under 40 C.F.R. § 372.65.

11 20. The quantity of lead compounds that Respondent processed
12 at the Facility during calendar year 2004 exceeds the established
13 threshold of 100 pounds set forth at 40 C.F.R. § 372.28.

14 21. Respondent failed to submit a Form R for lead compounds
15 to the EPA Administrator and to the State of Arizona on or before
16 July 1, 2005.

17 22. Respondent's failure to submit a timely Form R for lead
18 compounds that Respondent processed at the Facility during
19 calendar year 2004 constitutes a violation of Section 313 of
20 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

21 **PROPOSED CIVIL PENALTY**

22 Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.
23 Part 19 authorize EPA to assess a penalty of up to \$27,500 for
24 each violation of Section 313 of EPCRA that occurred on or after
25 January 31, 1997 but before March 15, 2004 and up to \$32,500 for
26 each violation that occurred on or after March 15, 2004. Based
27 on the violations cited in this Amended Complaint, on the nature,

1 circumstances, extent and gravity of the violations alleged, and
2 on the degree of Respondent's culpability, as set forth in the
3 Enforcement Response Policy for Section 313 of EPCRA dated August
4 10, 1992 (a copy of which is enclosed), EPA proposes that
5 Respondent be assessed the following civil penalty for the
6 violations alleged in this Amended Complaint:

7 COUNT I

8 Failure to submit a timely Form R for lead compounds for calendar
9 year 2002:

10 Circumstance Level 1, Extent Level A \$ 27,500

11 COUNT II

12 Failure to submit a timely Form R for lead compounds for calendar
13 year 2003:

14 Circumstance Level 1, Extent Level A \$ 32,500

15 COUNT III

16 Failure to submit a timely Form R for lead compounds for calendar
17 year 2004:

18 Circumstance Level 1, Extent Level A \$ 32,500

19 **Total Penalty Proposed.....\$ 92,500**

20 **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

21 You have the right to request a formal hearing to contest
22 any material fact set forth in this Amended Complaint or to
23 contest the appropriateness of the proposed penalty. Any hearing
24 requested will be conducted in accordance with the Administrative
25 Procedure Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules
26 of Practice Governing the Administrative Assessment of Civil
27 Penalties and the Revocation/Termination or Suspension of Permits

1 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of
2 the Consolidated Rules of Practice is enclosed with this Amended
3 Complaint.

4 You must file a written Answer within thirty (30) days of
5 receiving this Amended Complaint to avoid being found in default,
6 which constitutes an admission of all facts alleged in the
7 Amended Complaint and a waiver of the right to a hearing, and to
8 avoid having the above penalty assessed without further
9 proceedings. If you choose to file an Answer, you are required
10 by the Consolidated Rules of Practice to clearly and directly
11 admit, deny, or explain each of the factual allegations contained
12 in this Amended Complaint to which you have any knowledge. If
13 you have no knowledge of a particular fact and so state, the
14 allegation is considered denied. Failure to deny any of the
15 allegations in this Amended Complaint will constitute an
16 admission of the undenied allegation.

17 The Answer shall also state the circumstances and arguments,
18 if any, which are alleged to constitute the grounds of defense,
19 and shall specifically request an administrative hearing, if
20 desired. If you deny any material fact or raise any affirmative
21 defense, you will be considered to have requested a hearing.

22 The Answer must be filed with:

23 **Regional Hearing Clerk**
24 **USEPA, Region 9**
25 **75 Hawthorne Street**
26 **San Francisco, CA 94105**

27 In addition, please send a copy of the Answer and all other
28 documents that you file in this action to:

1 divest the Presiding Officer of jurisdiction nor does it
2 automatically stay the proceeding.

3 **QUICK RESOLUTION**

4 Instead of requesting an informal settlement conference or
5 filing an Answer requesting a hearing, you may choose to resolve
6 the proceeding by paying the specific penalty proposed in the
7 Amended Complaint and filing a copy of the check or other
8 instrument of payment with the Regional Hearing Clerk within
9 thirty (30) days after receiving the Amended Complaint. If you
10 wish to resolve the proceeding in this manner instead of filing
11 an answer but need additional time to pay the penalty, you may
12 file a written statement stating that you agree to pay the
13 proposed penalty in accordance with 40 C.F.R § 22.18(a)(1) with
14 the Regional Hearing Clerk within 30 days after receiving the
15 Amended Complaint. The written statement need not contain any
16 response to, or admission of, the allegations in the Amended
17 Complaint. Within sixty (60) days after receiving the Amended
18 Complaint, the full amount of the proposed penalty must be paid.
19 Failure to make such payment within this sixty-day period may
20 subject you to default. Upon receipt of payment in full, the
21 Regional Judicial Officer will issue a final order. Payment by a
22 respondent shall constitute a waiver of the respondent's rights
23 to contest the allegations and to appeal the final order. In
24 addition, full payment of the proposed penalty shall only resolve
25 Respondent's liability for Federal civil penalties for violations
26 and facts alleged in the Amended Complaint and does not affect
27 the right of EPA or the United States to pursue appropriate

1 injunctive or other equitable relief or criminal sanctions for
2 any violations of law.

3 CONSENT AGREEMENT AND FINAL ORDER

4 EPA has the authority, where appropriate, to modify the
5 amount of the proposed penalty to reflect any settlement reached
6 with you in an informal conference or through alternative dispute
7 resolution. The terms of such an agreement would be embodied in
8 a Consent Agreement and Final Order. A Consent Agreement signed
9 by both parties would be binding as to all terms and conditions
10 specified therein when the Regional Judicial Officer signs the
11 Final Order.

12
13
14 Date: 16 MAY 08

 for

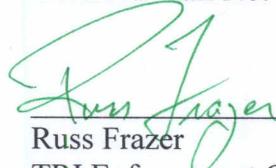
Jeff Scott
Acting Director
Communities and Ecosystems Division
U.S. EPA, Region 9

CERTIFICATE OF SERVICE

I certify that the original fully executed First Amended Complaint and Notice of Opportunity for Hearing, Docket Number EPCRA-09-2007-0029, was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, and that a true and correct copy of this First Amended Complaint and Notice of Opportunity for Hearing was sent to Respondent at the following address:

Mr. Mark Matson
Vice President of Operations
Rockford Corporation
600 South Rockford Drive
P.O. Box 1860
Tempe, AZ 85280-1860

Certified Mail No: 7003 3110 0006 1997 3705



Russ Frazer
TRI Enforcement Officer
Toxics Office
Region IX, EPA
Office of Regional Counsel

5/20/08
Date