



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

JUL 16 2007

REPLY TO THE ATTENTION OF: SC-6J

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

Mr. Timothy D. Hutson  
Registered Agent for:  
Hutson Enterprises, Inc.  
d/b/a Sparkle Pool Service & Supply of Indiana  
5820 Massachusetts Avenue  
Indianapolis, Indiana 46218

Re: In the Matter of Hutson Enterprises, Inc.,  
d/b/a Sparkle Pool Service & Supply of Indiana,  
Docket No: **EPCRA-05-2007-0027**

Dear Mr. Hutson:

I have enclosed a Complaint filed against Hutson Enterprises, Inc., d/b/a Sparkle Pool Service & Supply of Indiana, under section 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and (c)(2). The Complaint alleges your company violated section 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 Robert S. Guenther, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-0566.

Sincerely yours,

Mark J. Horwitz, Chief  
Chemical Emergency Preparedness  
and Prevention Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**Hutson Enterprises, Inc.,  
d/b/a Sparkle Pool Service &  
Supply of Indiana,  
Indianapolis, Indiana**

**Respondent.**

( **Docket No. EPCRA-05-2007-0027**  
(  
( **Proceeding to Assess a Civil Penalty**  
( **under Section 325(c) of the Emergency**  
( **Planning and Community Right-to-**  
( **Know Act of 1986.**  
(  
(  
(

**COMPLAINT**

1. This is an administrative proceeding to assess a civil penalty under section 325(c)(1) and (c)(2), of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and (c)(2).

2. The Complainant is, by lawful delegation, the Chief, Emergency Response Branch I, Superfund Division, Region 5, United State Environmental Protection Agency (U.S. EPA).

3. The Respondent is Hutson Enterprises Inc., corporation doing business in the State of Indiana as Sparkle Pool Service & Supply of Indiana.

**Statutory and Regulatory Background**

4. 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 the Occupational Safety and Health Administration (OSHA), 29 C.F.R. Part 1910, to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1 each year an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370) when appropriate. 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.

5. Federal regulations, at 40 C.F.R. § 1910.1200(g)(1), state that employers must have an MSDS in the workplace for each hazardous chemical which they use.

### **General Allegations**

6. Respondent is a corporation organized under the laws of the State of Indiana.

7. Respondent is a “person” as that term is defined under section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

8. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 5820 Massachusetts Avenue, Indianapolis, Indiana (Facility).

9. At all times relevant to this Complaint, Respondent was an employer at the Facility.

10. Respondent’s Facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

11. Respondent’s Facility is a “facility” as that term is defined under section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

12. Sodium sesquicarbonate (CAS-533-96-0) is an irritant to skin and can damage lungs, skin, eyes and mucous membranes.

13. Sodium sesquicarbonate is a health hazard and is thus a hazardous chemical under 29 C.F.R. § 1910.1200(c) and section 311(e) of EPCRA, 42 U.S.C. § 11021(e).

14. Sodium sesquicarbonate has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.20(b)(2).

15. During at least one period of time in calendar year 2003, sodium sesquicarbonate was present at the Facility in an amount equal to or greater than 10,000 pounds.

16. During at least one period of time in calendar year 2004, sodium sesquicarbonate was present at the Facility in an amount equal to or greater than 10,000 pounds.

17. Chlorine (CAS-7782-50-5) is listed as an air contaminant at 40 C.F.R. § 1910.1000, subpart Z, and consequently, according to 40 C.F.R. § 1910.1200, must be treated as a hazardous chemical by employers.

18. Chlorine is an “extremely hazardous substance” according to section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

19. Chlorine (CAS-7782-50-5) has a minimum threshold level of 100 pounds, as provided in 40 C.F.R. § 370.20(b)(2).

20. During at least one period of time in calendar year 2003, chlorine was present at the Facility in an amount equal to or greater than 100 pounds.

21. During at least one period of time in calendar year 2004, chlorine was present at the Facility in an amount equal to or greater than 100 pounds.

22. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 1, 2004, an Emergency and Hazardous Chemical Inventory Form including chlorine and sodium sesquicarbonate stored at the facility during calendar year 2003.

23. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 1, 2005, an Emergency and Hazardous Chemical Inventory Form including chlorine and sodium sesquicarbonate stored at the facility during calendar year 2004.

24. At all times relevant to this Complaint, the Indiana State Emergency Response Commission was the state emergency response commission (SERC) for the State of Indiana, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

25. At all times relevant to this Complaint, the Indianapolis/Marion County Emergency Management Agency was the local emergency planning committee (LEPC) for Indianapolis and Marion County, under section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

26. At all times relevant to this Complaint, the Indianapolis Fire Department was the fire department with jurisdiction over the Facility.

**Count I**  
**Failure to File Tier Form for 2003 – SERC, LEPC & Fire Dep't**  
**42 U.S.C. § 11002(a)**

27. Complainant incorporates paragraphs 1 through 26 of this Complaint as it is set forth in this paragraph.

28. Respondent submitted to the SERC, LEPC and fire department with jurisdiction over the Facility a completed Emergency and Hazardous Chemical Inventory Form including chlorine and sodium sesquicarbonate on November 17, 2005, for calendar year 2003.

29. Each day during which Respondent failed to submit to the SERC, LEPC and fire department with jurisdiction over the Facility a completed Emergency and Hazardous Chemical Inventory Form including chlorine and sodium sesquicarbonate by March 1, 2004, for calendar year 2003, is a violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count II**  
**Failure to File Tier Form for 2004 – SERC**  
**42 U.S.C. § 11002(a)**

30. Complainant incorporates paragraphs 1 through 26 of this Complaint as it is set forth in this paragraph.

31. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including chlorine and sodium sesquicarbonate on November 17, 2005, for calendar year 2004

32. Each day during which Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including chlorine and sodium sesquicarbonate by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count III**  
**Failure to File Tier Form for 2004 – SERC**  
**42 U.S.C. § 11002(a)**

33. Complainant incorporates paragraphs 1 through 26 of this Complaint as it is set forth in this paragraph.

34. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including chlorine and sodium sesquicarbonate on November 17, 2005, for calendar year 2004

35. Each day during which Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including chlorine and sodium sesquicarbonate by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count IV**  
**Failure to File Tier Form for 2004 – Local Fire Dep't**  
**42 U.S.C. § 11002(a)**

36. Complainant incorporates paragraphs 1 through 26 of this Complaint as it is set forth in this paragraph.

37. Respondent submitted to the Indianapolis Fire Department a completed Emergency and Hazardous Chemical Inventory Form including chlorine and sodium sesquicarbonate on November 17, 2005, for calendar year 2004

38. Each day during which Respondent failed to submit to the Indianapolis Fire Department a completed Emergency and Hazardous Chemical Inventory Form including chlorine and sodium sesquicarbonate by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### **Proposed EPCRA Penalty**

39. Section 325(c)(1) of EPCRA, 42 U.S.C. 42 U.S.C. § 11045(c)(1) authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation for each EPCRA 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 that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

40. Based upon an evaluation of the facts alleged in this Complaint, and after considering the nature, circumstances, extent and gravity of the violations, degree of culpability, economic benefit or savings resulting from the violations, and any other matters that justice requires, Complainant calculated an initial gravity-based civil penalty against Respondent of \$84,150 for the EPCRA violations alleged in this Complaint. Complainant allocated this initial gravity-based proposed penalty to the various EPCRA counts of this Complaint as follows:

|   |       |             |                           |               |
|---|-------|-------------|---------------------------|---------------|
| Count I   | EPCRA | Section 312 | (SERC, LEPC, Fire Dep't): | \$ 1,257      |
| Count II  | EPCRA | Section 312 | (SERC):                   | 27,625        |
| Count III                                       | EPCRA | Section 312 | LEPC:                     | 27,625        |
| Count IV  | EPCRA | Section 312 | FD:                       | <u>27,625</u> |
| INITIAL GRAVITY-BASED EPCRA SECTION 325 PENALTY |       |             |                           | \$84,150      |

41. Complainant calculated the EPCRA penalties by evaluating the facts and circumstances of this case with specific reference to U.S. EPA's "Enforcement Response Policy for Sections 302, 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.

42. Complainant sent a letter to Respondent on March 27, 2006, stating its intention to file an administrative action seeking the initial gravity-based penalty calculated above. In response, Respondent submitted documentation which it allegedly demonstrated an inability to pay the entire initial gravity-based penalty. Consequently, based on the financial information submitted by Respondent, Complainant is proposing a penalty for the violations alleged in this Complaint of **\$33,000**.

#### **Rules Governing this Proceeding**

43. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (the Consolidate 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**

44. 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 – Region5  
Attn: Finance  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

45. The check must note the case title of this matter: *In re: Hutson Enterprises, Inc., d/b/a Sparkle Pool Service & Supply of Indiana*, and the docket number of this Complaint.

46. A transmittal letter, stating the case title, Respondent's complete address, the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

Ruth McNamara  
Chemical Emergency Preparedness  
and Prevention Section (SC-6J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

Robert S. Guenther  
Office of Regional Counsel (C-14J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

47. This civil penalty is not deductible for federal tax purposes.

### **Notice of Opportunity to Request a Hearing**

48. 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 specifically make the request in its Answer, as discussed below.

### **Answer**

49. Respondent must file a written Answer to this Complaint if Respondent contests any material fact of the Complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified below.

Regional Hearing Clerk (E-19)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

50. Respondent must send a copy of its Answer and copies of all other documents that Respondent files in this action to Robert S. Guenther at the address provided for him in paragraph 46, above.

51. If Respondent chooses to file a written Answer to the Complaint, it must do so within 30 calendar days after receiving the Complaint. 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.

52. 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.

53. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

54. 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.

55. 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 U.S. EPA under Section 22.27(c) of the Consolidated Rules.

56. 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, U.S. 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.

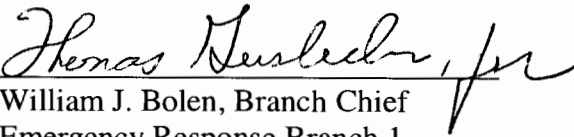
### Settlement Conference

57. 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 at the address provided for her in paragraph 46, above.

58. 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.

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

Date: 7-11-07

  
William J. Bolen, Branch Chief  
Emergency Response Branch 1  
Superfund Division  
U.S. EPA Region 5

IN THE MATTER OF: Hutson Ents., d/b/a Sparkle Pool Service & Supply of Indiana  
Indianapolis, Indiana

DOCKET NO: **EPCRA-05-2007-0027**

IN THE MATTER OF: Hutson Ents., d/b/a Sparkle Pool Service & Supply of Indiana  
Indianapolis, Indiana

DOCKET NO: **EPCRA-05-2007-0027**

**Certificate of Service**

I, certify that I filed the original and one copy of the Administrative Complaint, this day with the Regional Hearing Clerk, (E13J) U.S. EPA Region 5, 77 W. 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:

Mr. Timothy D. Hutson  
Registered Agent for:  
Hutson Enterprises, Inc. d/b/a  
Sparkle Pool Service & Supply of Indiana  
5820 Massachusetts Avenue  
Indianapolis, IN 46218

I have also posted by first class U.S. Mail a copy of the administrative complaint to:

Karen Lowell, Esquire  
1683 Southwest 109<sup>th</sup> Terr.  
Ft. Lauderdale, FL 33324

and

Guinn P. Doyle, Esquire  
Barnes and Thornburg, LLP  
11 South Meridian Street  
Indianapolis, IN 46204-3535

7/16/07  
Date

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