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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

SEP 30 PM 4:06
U.S. EPA REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF

Lubricating Specialties Company

Respondent

Docket No. EPCRA-09-2009-0016

**CIVIL COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING UNDER
SECTION 325(c) OF THE EMERGENCY
PLANNING AND COMMUNITY RIGHT-
TO-KNOW ACT**

PRELIMINARY STATEMENT

APPLICABLE STATUTORY AND REGULATORY SECTIONS

This is a civil administrative action ("Complaint") instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 11001 et seq., also known as the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), for violation of 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. The Administrator of the United States Environmental Protection Agency ("EPA") has delegated the authority to file this action under EPCRA to the Regional Administrator, Region IX, by EPA Delegation Order Number 22-3-A, dated May 11, 1994. The Regional Administrator, Region IX, has further delegated the authority to file this action under EPCRA to the Director of the Communities and Ecosystems Division by EPA Regional Order Number R1260.14B, dated May 19, 2005.

Complainant is the Director of the Communities and Ecosystems Division in EPA, Region IX, who has been duly delegated the authority to bring this action. Respondent is Lubricating Specialties Company. This administrative action alleges that Respondent has

1 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations promulgated to
2 implement Section 313 at 40 C.F.R. Part 372.

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4 A. GENERAL ALLEGATIONS

- 5 1. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
6 promulgated the Toxic Chemical Release Reporting: Community Right-To-Know Rule at
7 40 C.F.R. Part 372.
- 8
9 2. Sections 313(a) and (b) of EPCRA, as implemented by 40 C.F.R. §§ 372.22 and 372.30,
10 provide that an owner or operator of a facility that meets the criteria set forth in EPCRA
11 Section 313(b) and 40 C.F.R. § 372.22, is required to submit annually to the Administrator
12 of EPA and to the State in which the facility is located, no later than July 1st of each year, a
13 toxic chemical release inventory reporting form (hereinafter "Form R") for each toxic
14 chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise
15 used at the facility during the preceding calendar year in quantities exceeding the thresholds
16 established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.
- 17
18 3. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that the requirements of Section
19 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that has 10 or
20 more full-time employees; that is in a Standard Industrial Classification major group codes
21 10 (except 1011, 1081, 1094), 12 (except 1241), 20 through 39; industry codes 4911, 4931,
22 or 4939 (limited to facilities regulated under the Resource Conservation and Recovery Act,
23 subtitle C, 42 U.S.C. § 6921 *et seq.*), or 5169, 5171, or 7389 (limited to facilities primarily
24 engaged in solvent recovery services on a contract or fee basis); and that manufactures,
25 processes, or otherwise uses one or more toxic chemicals listed under Section 313(c) of
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1 EPCRA and 40 C.F.R. § 372.65 in quantities in excess of the applicable thresholds
2 established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.

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4 4. The applicable threshold for reporting established under EPCRA Section 313(f) and 40
5 C.F.R. § 372.25 is 25,000 pounds of a regulated toxic chemical processed for the year.

6
7 5. Under 40 C.F.R. § 372.3, the term “process” means “the preparation of a toxic chemical,
8 after its manufacture, for distribution into commerce.”

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10 **B. SPECIFIC ALLEGATIONS**

11 6. Respondent is a California registered corporation.

12 7. Respondent owns, operates and is wholly responsible for two places of business with
13 addresses at (1) 3365 East Slauson Avenue, Vernon, California (the “Vernon Facility”) and
14 (2) 8015 Paramount Blvd, Pico Rivera, California (the “Pico Rivera Facility”).

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16 8. Respondent is a “person” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. §
17 11049(7) since it is a corporation.

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19 9. At all times relevant to this Complaint, Respondent was an owner and operator of a
20 “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and
21 40 C.F.R. § 372.3.

22
23 10. At all times relevant to this Complaint, the Vernon Facility had 10 or more “full-time
24 employees,” as that term is defined at 40 C.F.R. § 372.3.

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26 11. The Vernon Facility processes zinc compounds to produce lubricants and greases for
27 distribution into commerce.

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29 12. The Vernon Facility is classified in Standard Industrial Classification code 2992, which falls
30 within Standard Industrial Classification major group code 29.

1 13. At all times relevant to this Complaint, the Pico Rivera Facility had 10 or more “full-time
2 employees,” as that term is defined at 40 C.F.R. § 372.3.

3
4 14. The Pico Rivera Facility processes zinc compounds to produce lubricants and greases for
5 distribution into commerce.

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7 15. The Pico Rivera Facility is classified in Standard Industrial Classification code 2992, which
8 falls within Standard Industrial Classification major group code 29.

9
10 16. Zinc compounds is a chemical listed under 40 C.F.R. § 372.65, EPA Chemical Category No.
11 N982.

12 Counts 1-3

13
14 17. Paragraphs 1 through 16 are realleged and incorporated herein by reference.

15 18. During calendar year 2005, the Vernon Facility processed approximately 41,708 pounds of
16 zinc compounds.

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18 19. During calendar year 2006, the Vernon Facility processed approximately 92,487 pounds of
19 zinc compounds.

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21 20. During calendar year 2007, the Vernon Facility processed approximately 140,168 pounds of
22 zinc compounds.

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24 21. The quantity of zinc compounds that Respondent processed at the Vernon Facility during
25 calendar years 2005, 2006 and 2007 exceeded the established threshold of 25,000 pounds
26 set forth at 40 C.F.R. § 372.25(b).

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28 22. Respondent was required to submit a Form R for zinc compounds processed during calendar
29 years 2005, 2006 and 2007 at the Vernon Facility to the EPA Administrator and to the State
30 of California on or before July 1st, 2006, 2007 and 2008, respectively.
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1 23. Respondent failed to submit a Form R for zinc compounds processed during calendar years
2 2005, 2006 and 2007 at the Vernon Facility to the EPA Administrator and to the State of
3 California on or before July 1st, 2006, 2007 and 2008, respectively.
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5 24. Respondent's failure to submit a timely Form R for zinc compounds that Respondent
6 processed at the Vernon Facility during calendar years 2005, 2006 and 2007 constitutes
7 three violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
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10 Counts 4-6

11 25. Paragraphs 1 through 16 are realleged and incorporated herein by reference.

12 26. During calendar year 2005, the Pico Rivera Facility processed approximately 962,595
13 pounds of zinc compounds.
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15 27. During calendar year 2006, the Pico Rivera Facility processed approximately 838,556
16 pounds of zinc compounds.
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18 28. During calendar year 2007, the Pico Rivera Facility processed approximately 477,170
19 pounds of zinc compounds.
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21 29. The quantity of zinc compounds that Respondent processed at the Pico Rivera Facility
22 during calendar years 2005, 2006 and 2007 exceeded the established threshold of 25,000
23 pounds set forth at 40 C.F.R. § 372.25(b).
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25 30. Respondent was required to submit a Form R for zinc compounds processed during calendar
26 years 2005, 2006 and 2007 at the Pico Rivera Facility to the EPA Administrator and to the
27 State of California on or before July 1st, 2006, 2007 and 2008, respectively.
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29 31. Respondent failed to submit a Form R for zinc compounds processed during calendar years
30 2005, 2006 and 2007 at the Pico Rivera Facility to the EPA Administrator and to the State
31 of California on or before July 1st, 2006, 2007 and 2008, respectively.
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32. Respondent's failure to submit a timely Form R for zinc compounds that Respondent processed at the Pico Rivera Facility during calendar years 2005, 2006 and 2007 constitutes three violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

PROPOSED CIVIL PENALTY

Section 325(c) of EPCRA authorizes the Administrator of the United States Environmental Protection Agency ("EPA") to assess a civil penalty not to exceed \$25,000 for each violation of Section 313 of EPCRA, 42 U.S.C. § 11045(c). That statutory maximum civil penalty has subsequently been raised to \$32,500 for each violation of Section 313 of EPCRA that occurred after March 15, 2004, but on or before January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19.

Based upon the facts alleged in this Complaint, Complainant requests that the Administrator assess against the Respondent a civil administrative penalty of up to \$32,500 for each violation of Section 313 of EPCRA.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

You have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

You must file a written Answer within thirty (30) days of receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the

1 **Complaint and a waiver of the right to a hearing, and to avoid having the above penalty**
2 **assessed without further proceedings.** If you choose to file an Answer, you are required by the
3 Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual
4 allegations contained in this Complaint to which you have any knowledge. If you have no
5 knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny
6 any of the allegations in this Complaint will constitute an admission of the undenied allegation.
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9 The Answer shall also state the circumstances and arguments, if any, which are alleged to
10 constitute the grounds of defense, and shall specifically request an administrative hearing, if
11 desired. If you deny any material fact or raise any affirmative defense, you will be considered to
12 have requested a hearing.
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15 The Answer must be filed with:

16 **Regional Hearing clerk**
17 **USEPA, Region IX**
18 **75 Hawthorne Street**
19 **San Francisco, CA 94105**

20 In addition, please send a copy of the Answer and all other documents filed in this action to:

21 **Ivan Lieben**
22 **Assistant Regional Counsel**
23 **Office of Regional Counsel (ORC-2)**
24 **USEPA, Region IX**
25 **75 Hawthorne Street**
San Francisco, CA 94105

26 Mr. Lieben is the attorney assigned to represent EPA in this matter. His telephone number is
27 (415) 972-3914.
28

29 You are further informed that the Consolidated Rules of Practice prohibit any **ex parte**
30 (unilateral) discussion of the merits of any action with the Regional Administrator, Regional
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1 Judicial Officer, Administrative Law Judge, or person likely to advise these officials in the
2 decision of the case, after the Complaint is issued.
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4 **INFORMAL SETTLEMENT CONFERENCE**

5 EPA encourages all parties against whom a civil penalty is proposed to pursue the
6 possibility of settlement through informal conferences. Therefore, whether or not you request a
7 hearing, you may confer informally with EPA through Mr. Lieben, the EPA attorney assigned to
8 the case, regarding the facts of this case, the amount of the proposed penalty, and the possibility
9 of settlement. **An informal settlement conference does not, however, affect your obligation**
10 **to file an Answer to this Complaint.**
11
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13 **ALTERNATIVE DISPUTE RESOLUTION**


14 The parties also may engage in any process within the scope of the Alternative Dispute
15 Resolution Act, 5 U.S.C. § 581 et seq., which may facilitate voluntary settlement efforts.
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17 Dispute resolution using alternative means of dispute resolution does not divest the Presiding
18 Officer of jurisdiction nor does it automatically stay the preceding.
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21 **CONSENT AGREEMENT AND FINAL ORDER**

22 EPA has the authority, where appropriate, to modify the amount of the proposed penalty to
23 reflect any settlement reached with you in an informal conference or through alternative dispute
24 resolution. The terms of such an agreement would be embodied in a Consent Agreement and
25 Final Order. A Consent Agreement signed by the parties would be binding as to all terms and
26 conditions specified therein for the parties signing the Consent Agreement when the Regional
27 Judicial Officer signs the Final Order.
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DATE: SEP 29 2009


ENRIQUE MANZANILLA
Director
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and foregoing Complaint and Notice of Opportunity for Hearing, Docket Number EPCRA-09-2009-0016, was filed today 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:


- (1) the Complaint;
- (2) the Consolidated Rules of Practice, 40 C.F.R. Part 22; and
- (3) the 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), dated April 12, 2001

were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Stephen J. Miller
Vice President, Manufacturing
Lubricating Specialties Company
8015 Paramount Blvd.
Pico Rivera, California 90660

Certified Return Receipt Article No: 7003 3110 0006 2000 7239

Dated: SEP 30 2009

Russ Frazer 
TRI Program Enforcement Officer, Toxics Office
Communities and Ecosystems Division
United States Environmental Protection Agency
Region IX