



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
APR 23 2013

REPLY TO THE ATTENTION OF:

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

Mr. Scott Hendryx  
Operations Manager  
Sun Chemical Corporation  
4925 Evanston Avenue  
Muskegon, Michigan 49442

Re: In the Matter of Sun Chemical Corporation, Muskegon, Michigan  
Docket No: MM-05-2013-0005 CERCLA-05-2013-0008 EPCRA-05-2013-0012

Dear Mr. Hendryx:

I have enclosed a Complaint filed against Sun Chemical Corporation, under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609, and 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 Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

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. Mail a copy of your answer to Catherine Garypie, Associate Regional Counsel, U.S. EPA, 77 West Jackson Boulevard (C-14J), Chicago, Illinois 60604.

In addition, whether or not you request a hearing, you may request an informal settlement conference by contacting James Entzminger, Environmental Protection Specialist, at (312) 886-4062. If you have any legal questions, please contact Catherine Garypie, Associate Regional Counsel, at (312) 886-5825.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon Jaffess".

Sharon Jaffess, Chief  
Enforcement and Compliance Assurance Branch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

EPCRA-05-2013-0012

In the Matter of: ) Docket No. MM-05-2013-0005 CERCLA-05-2013-0008  
)  
Sun Chemical Corporation, ) Proceeding to Assess a Civil Penalty Under  
Muskegon, Michigan, ) Section 109(b) of the Comprehensive  
RECEIVED ) Environmental Response, Compensation, and  
APR 23 2013 ) Liability Act, and Section 325(b)(2) of the  
) Emergency Planning and Community Right-  
Respondent. ) to-Know Act of 1986  
REGIONAL HEARING CLERK )  
U.S. ENVIRONMENTAL )  
PROTECTION AGENCY )

Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2).

2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is Sun Chemical Corporation, a Delaware corporation doing business in the State of Michigan.

Statutory and Regulatory Background

4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

5. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires the owner or operator of a facility to immediately provide notice, as described in Section 304(b) of EPCRA,

42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

6. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), the owner or operator of a facility must give the notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

7. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

8. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term "hazardous chemical" has the meaning given such term by 29 U.S.C. § 1910.1200(c).

9. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

10. Under 29 C.F.R. § 1910.1200(c), a simple asphyxiant is a substance or mixture that displaces oxygen in the ambient atmosphere, and can thus cause oxygen deprivation in those who are exposed, leading to unconsciousness and death.

### General Allegations

11. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
12. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
13. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 4925 Evanston Avenue, Muskegon, Michigan (facility).
14. At all times relevant to this Complaint, Respondent was in charge of the facility.
15. Respondent’s facility consists of buildings, structures, installation, equipment, pipe or pipeline, storage containers, or any site or area where a hazardous substance has been stored, or otherwise come to be located.
16. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
17. 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.
18. Black Creek flows through Respondent’s facility.
19. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
20. Ammonia (CAS #7664-41-7) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
21. Ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

22. The material safety data sheet for ammonia provided by Respondent to EPA identifies toxicological and ecological toxicity data for oral acute toxicity, category 4.

23. Ammonia is classified as a physical or health hazard and a simple asphyxiant.

24. Anhydrous ammonia (CAS #7664-41-7) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

25. At all times relevant to this Complaint, Respondent produced, used or stored anhydrous ammonia at the facility.

26. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

27. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

28. On September 3, 2012 starting at or about 2:47 p.m., a release occurred from Respondent’s facility of approximately 1,400 pounds of anhydrous ammonia (the release).

29. In a 24 hour time period, the release of anhydrous ammonia exceeded 100 pounds.

30. During the release, approximately 1,400 pounds of anhydrous ammonia leaked, emitted, emptied, discharged, or escaped into surface water, ambient air or air.

31. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

32. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

33. Respondent had knowledge of the release on September 3, 2012, at approximately 3:00 p.m.

34. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

35. The release was likely to affect Michigan.

36. At all times relevant to this Complaint, the Michigan Citizen-Community Emergency Response Coordinating Council was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

37. The release was likely to affect Muskegon County, Michigan.

38. At all times relevant to this Complaint, the Muskegon County, Michigan LEPC was the LEPC for Muskegon County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

#### **Count 1**

39. Complainant incorporates paragraphs 1 through 38 of this Complaint as if set forth in this paragraph.

40. Respondent notified the NRC of the release on September 4, 2012 at 9:28 a.m.

41. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

42. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

#### **Count 2**

43. Complainant incorporates paragraphs 1 through 38 of this Complaint as if set forth in this paragraph.

44. Respondent notified the Michigan SERC of the release on September 4, 2012 at approximately 11:00 a.m.

45. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

46. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

### **Count 3**

47. Complainant incorporates paragraphs 1 through 38 of this Complaint as if set forth in this paragraph.

48. Respondent notified the LEPC of the release on September 6, 2012 at 11:00 a.m.

49. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

50. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

### **Proposed CERCLA Penalty**

51. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$37,500 per day of violation for violations that occurred after January 12, 2009.

52. Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), requires U.S. EPA to consider the nature, circumstances, extent and gravity of the violations, a violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation and any other matters that justice may require, when assessing an administrative penalty under Section 109(b) of CERCLA.

53. Based upon an evaluation of the facts alleged in this Complaint and the factors in Section 109(a)(3) of CERCLA, Complainant proposes that the U.S. EPA assess a civil penalty against Respondent of \$34,765 for the CERCLA violation alleged in Count 1 of this Complaint.

54. Complainant calculated the CERCLA penalty by evaluating the facts and circumstances of this case with specific reference to U.S. EPA's policy titled 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.

#### **Proposed EPCRA Penalty**

55. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$37,500 per day of violation for violations that occurred after January 12, 2009.

56. 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 saving resulting from the violations and any other matters that justice may require, Complainant proposes that U.S. EPA assess a civil penalty against Respondent of \$70,226 for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various EPCRA counts of this Complaint as follows:

Count 2 EPCRA Section 304(a) (SERC):   \$34,765



Count 3 EPCRA Section 304(a) (LEPC): \$35,461

TOTAL EPCRA SECTION 325 PENALTY \$70,226

57. Complainant calculated the EPCRA penalties by evaluating the facts and circumstances of this case with specific reference to U.S. EPA's policy titled 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 (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.

#### **Filing and Service of Documents**

Respondent must file with the U.S. EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Catherine Garypie to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Catherine Garypie at (312) 886-5825. Her address is:

Catherine Garypie (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

**Terms of Payment**

Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check for the CERCLA violation payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

and by sending a certified or cashier's check for the EPCRA violations payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Fine and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and Catherine Garypie at the addresses given above, and to:

James Entzminger (SC-5J)  
Chemical Emergency Preparedness and  
Prevention Section  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

### **Answer and Opportunity to Request a Hearing**

If Respondent contests any material fact alleged in this Complaint or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, 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.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

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


### 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 James Entzminger, at (312) 886-4062.

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

**U.S. Environmental Protection Agency, Complainant**

4/23/13  
Date

  
Sharon Jaffess  
Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5



In the Matter of: Sun Chemical Corporation, Muskegon, Michigan  
Docket No. MM-05-2013-0005 CERCLA-05-2013-0008 EPCRA-05-2013-0012

Certificate of Service

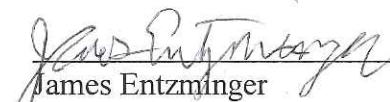
I, James Entzminger, certify that I filed the original and a copy of the Complaint with the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, and that I mailed a copy to the Respondent by first-class, postage prepaid, certified mail, return receipt requested, along with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, and the 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 (September 30, 1999), by placing them in the custody of the United States Postal Service addressed as follows:

Mr. Scott Hendryx  
Operations Manager  
Sun Chemical Corporation  
4925 Evanston Avenue  
Muskegon, Michigan 49442

Sun Chemical Corporation  
c/o Jacqueline M. Vidmar, Esq.  
Rooney Rippie & Ratnaswamy LLP  
Kingsbury Center  
350 W. Hubbard, Suite 600  
Chicago, Illinois 60654



On the 27 day of April, 2013.

  
James Entzminger  
U.S. Environmental Protection Agency  
Region 5