



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

RECEIVED
REGIONAL HEARING CLERK
JUN 29 2007 11:41

JUN 29 2007

REPLY TO THE ATTENTION OF:

C-14J

Honorable Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: TCM Progressive, Inc. (EPCRA-05-2006-0021)
Order to File Amended Complaint of Alternatively to Show Cause

Dear Judicial Officer Toney:

Pursuant to your June 12, 2007 Order to File Amended Complaint, or Alternatively, to Show Cause, I am enclosing an Amended Complaint in the above-referenced matter, along with a Certificate of Service.

The enclosed Amended Complaint addresses the inconsistencies referenced in the third paragraph of your Order. It also updates the payment instructions and addresses. I am also enclosing a redline version of the Amended Complaint as an attachment to this letter, to illustrate the additions and deletions made.

The original and one copy of the Amended Complaint have been filed with the Regional Hearing Clerk, and a copy is being served on Respondent.

Respectfully Submitted,

Maria E. Gonzalez
Associate Regional Counsel
Enclosure

cc (w/ enclosure):

Mr. David Rice (via certified mail/return receipt)
Regional Hearing Clerk
Stuart Brickner, Esq.
Susan Parker, MDEQ

2007 JUN 02 09:11:41

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No. EPCRA-05-2006-0021
)	
TCM Progressive, Inc.)	Proceeding to Assess a Civil
33900 West Nine Mile Road)	Penalty under Section 325(c) of the
Farmington, MI 48335)	Emergency Planning and Community
)	Right-to-Know Act of 1986.
Respondent.)	

Amended Complaint

1. This is an administrative proceeding to assess a civil penalty under Section (c)(1) of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045 (c)(1).
2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).
3. The Respondent is TCM Progressive, Inc., a corporation incorporated in the state of Michigan

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, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 or Tier II as described in 40 C.F.R. Part 370). 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. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.
6. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. § 1910, subpart Z are hazardous.

General Allegations

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 Amended Complaint ("Complaint"), Respondent was an owner or operator of the facility located at 33900 West Nine Mile Road, Farmington, Michigan(the Facility).
9. At all times relevant to this Complaint, Respondent was an employer at the Facility, and was required by OSHA to prepare, or have available, an MSDS for propane.
10. The 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. The Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
12. Propane is listed under OSHA regulations at 29 C.F.R. § 1910, subpart Z, § 1910.1000, Table Z-1.
13. Propane, CAS# 74-98-6, 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).
14. Propane, CAS# 74-98-6, has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.
15. During at least one period of time in calendar year 2002, propane was present at the Facility in an amount equal to or greater than the minimum threshold level.

16. During at least one period of time in calendar year 2003, propane was present at the Facility in an amount equal to or greater than the minimum threshold level.
17. During at least one period of time in calendar year 2004, propane was present at the Facility in an amount equal to or greater than the minimum threshold level.
18. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 1, 2003, a completed Emergency and Hazardous Chemical Inventory Form including propane, for calendar year 2002.
19. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 1, 2004, a completed Emergency and Hazardous Chemical Inventory Form including propane, for calendar year 2003.
20. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 1, 2005, a completed Emergency and Hazardous Chemical Inventory Form including propane, for calendar year 2004.
21. At all times relevant to this Complaint, the Michigan State Emergency Response Commission was the state emergency response commission (SERC) for Michigan, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

22. At all times relevant to this Complaint, the Oakland Local Emergency Planning Committee was the local emergency planning committee (LEPC) for Oakland County, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).
23. At all times relevant to this Complaint, the Farmington Fire Department was the fire department with jurisdiction over the Facility.

Count 1 Past Year 1

24. Complainant incorporates paragraphs 1 through 23 of this Complaint as if set forth in this paragraph.
25. As of January 31, 2006, Respondent had not submitted to the SERC, LEPC, or Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane for calendar year 2002.
26. Each day Respondent failed to submit to the SERC, LEPC, or Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2003, for calendar year 2002 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2 Past Year 2

27. Complainant incorporates paragraphs 1 through 23 of this Complaint as if set forth in this paragraph.
28. As of January 31, 2006, Respondent had not submitted to the SERC, LEPC, or Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane for calendar year 2003.
29. Each day Respondent failed to submit to the SERC, LEPC or Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2004, for calendar year 2003 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3

30. Complainant incorporates paragraphs 1 through 23 of this Complaint as if set forth in this paragraph.
31. As of January 31, 2006, Respondent had not submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including propane for calendar year 2004.
32. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2005, for calendar year 2004

is a violation of Section 312(a) of EPCRA, 42 U.S.C.
§ 11022(a).

Count 4

33. Complainant incorporates paragraphs 1 through 23 of this Complaint as if set forth in this paragraph.

34. As of January 31, 2006, Respondent had not submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including propane for calendar year 2004.

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

Count 5

36. Complainant incorporates paragraphs 1 through 23 of this Complaint as if set forth in this paragraph.

37. As of January 31, 2006, Respondent had not submitted to the Farmington Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane for calendar year 2004.

38. Each day Respondent failed to submit to the Farmington Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane 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. § 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, the violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violations, and any other matters that justice requires, Complainant

proposes that the Administrator assess a civil penalty against Respondent of \$99,675 for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various EPCRA counts of this Complaint as follows:

Count 1 EPCRA Section 312(a) Past Year 1:	\$1,275
Count 2 EPCRA Section 312(a) Past Year 2:	\$1,275
Count 3 EPCRA Section 312(a) (SERC):	\$32,375
Count 4 EPCRA Section 312(a) (LEPC):	\$32,375
Count 5 EPCRA Section 312(a) (fire dept.):	\$32,375
TOTAL EPCRA SECTION 325 PENALTY:	\$99,675

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 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

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

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.

Terms of Payment

43. 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 Region 5
Attn.: Finance
P.O. Box 371531
Pittsburgh, PA 15251-7531

44. The check must note the case title of this matter: TCM Progressive, Inc., and the docket number of this Complaint.

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

Regional Hearing Clerk (E-13J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

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

46. Alternatively, Respondent may pay by electronic funds transfer, payable to "Treasurer, United States of America," and sent to: Federal Reserve Bank of New York, ABA No. 021030004, Account No. 68010727, 33 Liberty Street, New York, NY 10045, Field Tag 4200 of the Fedwire message should read "D68010727, Environmental Protection Agency." In the comment or description field of the electronic funds transfer, state the following: the case title, the case docket number and the billing document number.
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-13J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

50. Respondent must send a copy of its Answer and copies of all other documents that Respondent files in this action to:

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

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

53. 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.

54. 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.

55. 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


56. 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:

Ginger Jager
Chemical Emergency Preparedness
and Prevention Section(SC-6J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
312-886-0767

57. 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.

58. 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: June 29, 2007


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

Re: Administrative Complaint
TCM Progressive, Inc.
EPCRA-05-2006-0021
33900 West Nine Mile Road
Farmington, MI 48335

CERTIFICATE OF SERVICE

I certify that today I filed the original and one copy of the foregoing Amended Complaint in the Matter of TCM Progressive, Inc. EPCRA-5-2006-0021, in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and promptly sent true and accurate copies of the filed document to the following individuals, by the method stated:

By Certified Mail, Return Receipt Requested:

Mr. David Rice
1441 Horseshoe Circle
Milford, MI 48381-3178


Mr. David Rice
33900 West Nine Mile Road
Farmington, Michigan 48335

Stuart Brickner
28411 Northwestern Highway
Suite 200
Southfield, MI 48034

By Hand Delivery:

Marcy Toney
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Dated: the 29th day of June, 2007


Donald E. Ayres
Paralegal Specialist, MM2-4
(312) 353-6719