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U.S. COURT OF APPEALS
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8 **United States**
9 **Environmental Protection Agency**
10 **Region IX**
11 **75 Hawthorne Street**
12 **San Francisco, CA 94105**

13 No. EPCRA-09-2009-0016

14 IN THE MATTER OF

15 Lubricating Specialties Company

16 Respondent

17 **LUBRICATING SPECIALTIES**
18 **COMPANY'S ANSWER TO CIVIL**
19 **COMPLAINT AND NOTICE OF**
20 **OPPORTUNITY FOR HEARING**
21 **UNDER SECTION 325(c) OF THE**
22 **EMERGENCY PLANNING AND**
23 **COMMUNITY RIGHT-TO-KNOW ACT**

24 Respondent Lubricating Specialties Company (LSC), in accordance with 40 C.F.R.
25 22.15, hereby admits, denies or avers as follows:

26 **A. General Allegations**

- 27 1. LSC admits the statement in paragraph 1.
- 28 2. LSC admits the statement in paragraph 2.
- 3. LSC admits the statement in paragraph 3.
- 4. LSC admits the statements in paragraph 4.
- 5. LSC admits the statement in paragraph 5.

A. Specific Allegations

- 6. LSC admits that it is a California registered corporation.

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1 7. LSC admits that it operates a facility in Vernon, California and a second in Pico
2 Rivera, California.

3 8. LSC admits that, under the definition provided in Section 329(7), 42 U.S.C. §
4 11049(7) of EPCRA, it qualifies as a “person.”

5 9. LSC admits that, at times relevant to the Complaint, it was an owner and operator
6 of a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4),
7 and 40 C.F.R. § 372.3.

8 10. LSC admits that, at times relevant to the Complaint, it employed more than 10
9 “full-time employees,” as that term is defined at 40 C.F.R. § 372.3, at the Vernon Facility.

10 11. LSC admits that the Vernon Facility processes zinc compounds to produce
11 lubricants and greases for distribution into commerce.

12 12. LSC admits that the Vernon Facility is classified in Standard Industrial
13 Classification code 2992, which falls under Standard Industrial Classification major group
14 code 29.

15 13. LSC admits that, at times relevant to the Complaint, it employed more than 10
16 “full-time employees,” as that term is defined at 40 C.F.R. § 372.3 at the Pico Rivera
17 Facility.

18 14. LSC admits that the Pico Rivera Facility processes zinc compounds to produce
19 lubricants and greases for distribution into commerce.

20 15. LSC admits that the Pico Rivera Facility is classified in Standard Industrial
21 Classification code 2992, which falls under Standard Industrial Classification major group
22 code 29.

23 16. LSC admits that zinc compounds is a chemical listed under 40 C.F.R. § 372.65,
24 EPA Chemical Category No. N982.

25
26 **Counts 1-3**

27 17. LSC incorporates by reference its answers from paragraphs 1 through 16.
28

1 18. LSC admits that during calendar year 2005, the Vernon Facility processed
2 approximately 41,708 pounds of zinc compounds.

3 19. LSC admits that during calendar year 2006, the Vernon Facility processed
4 approximately 92,487 pounds of zinc compounds.

5 20. LSC admits that during calendar year 2007, the Vernon Facility processed
6 approximately 140,168 pounds of zinc compounds.

7 21. LSC admits that the quantity of zinc compounds processed in calendar years
8 2005, 2006 and 2007 at the Vernon Facility exceeded the established threshold of 25,000
9 pounds set forth at 40 C.F.R. § 372.25(b).

10 22. LSC admits that it was required to submit a Form R for zinc compounds
11 processed during calendar years 2005, 2006 and 2007 at the Vernon Facility to the EPA
12 Administrator and to the State of California on or before July 1st, 2006, 2007 and 2008,
13 respectively.

14 23. LSC only admits that it did not submit a Form R for zinc compounds processed
15 during calendar years 2005, 2006 and 2007 at the Vernon Facility to the EPA Administrator
16 and to the State of California on or before July 1, 2006, 2007 and 2008, respectively. LSC
17 avers that it did, however, immediately submit the Form Rs for calendar years 2005, 2006
18 and 2007 at the Vernon Facility to an EPA inspector on April 16, 2009, then filed them with
19 the EPA on July 14, 2009.

20 24. LSC admits that its failure to submit a timely Form R for zinc compounds
21 processed at the Vernon Facility during calendar years 2005, 2006 and 2007 constitutes
22 three violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

23 **Counts 4-6**

24 25. LSC incorporates by reference its answers from paragraphs 1 through 16.

25 26. LSC admits that during calendar year 2005, the Pico Rivera Facility processed
26 approximately 962,595 pounds of zinc compounds.
27
28

1 27. LSC admits that during calendar year 2006, the Pico Rivera Facility processed
2 approximately 838,556 pounds of zinc compounds.

3 28. LSC admits that during calendar year 2007, the Pico Rivera Facility processed
4 approximately 477,170 pounds of zinc compounds.

5 29. LSC admits that the quantity of zinc compounds processed in calendar years
6 2005, 2006 and 2007 at the Pico Rivera Facility exceeded the established threshold of
7 25,000 pounds set forth at 40 C.F.R. § 372.25(b).

8 30. LSC admits that it was required to submit a Form R for zinc compounds
9 processed during calendar years 2005, 2006 and 2007 at the Pico Rivera Facility to the EPA
10 Administrator and to the State of California on or before July 1st, 2006, 2007 and 2008,
11 respectively.

12 31. LSC only admits that it did not submit a Form R for zinc compounds processed
13 during calendar years 2005, 2006 and 2007 at the Pico Rivera Facility to the EPA
14 Administrator and to the State of California on or before July 1, 2006, 2007 and 2008,
15 respectively. LSC avers that it did, however, immediately submit the Form Rs for calendar
16 years 2005, 2006 and 2007 at the Vernon Facility to EPA's inspector on April 16, 2009,
17 then filed them with the EPA on July 14, 2009.

18 32. LSC admits that its failure to submit a timely Form R for zinc compounds
19 processed at the Pico Rivera Facility during calendar years 2005, 2006 and 2007 constitutes
20 three violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

21
22
23 **Objection to Proposed Civil Penalty**

24 While LSC admits that Section 313 of EPCRA, 42 U.S.C. § 11045(c) authorizes the
25 EPA to assess a penalty of up to \$32,500 for each of the six violations, LSC seeks a penalty
26 consistent with the statute's penalty factors (see 42 U.S.C. § 11045(b)(1)(C)) as applied to
27 this case. Specifically, (1) the circumstances of the violation were such that LSC relied on
28 incorrect information provided by the California Department of Toxic Substance Control,

1 which caused it not to file for the years at issue; (2) the gravity of the violation is low; (3)
2 LSC is a relatively small company (only 172 total employees) and a penalty will have an
3 adverse economic impact on LSC; (4) LSC has no previous violations; (5) LSC has a low
4 level of culpability, as it believed that it was compliant; (6) LSC realized no economic
5 benefit or savings from the violations; (7) upon discovery of the mistakes, LSC immediately
6 and voluntarily disclosed them to the EPA; (8) upon discovery of the mistakes, LSC took
7 swift and immediate remedial action; (9) LSC has cooperated fully with the EPA during its
8 investigation; (10) LSC has hired a new regulatory compliance expert, with over 18 years of
9 experience, to ensure that its facilities are environmentally compliant; and (11) LSC has
10 offered to implement two Supplemental Environmental Projects at a cost of \$120,000.

11 **Request for Hearing**

12 LSC formally requests a hearing.

13
14 DATED this 19th day of January, 2010.

15 BRYAN CAVE LLP

16 
17 By s/Michael C. Ford

18 Michael C. Ford

19 Two N. Central Avenue, Suite 2200
20 Phoenix, AZ 85004-4406

21 ORIGINAL of the foregoing filed this
22 19th day of January, 2010, with:

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

27 COPY of the foregoing mailed this
28 19th day of January, 2010, to:

Ivan Lieben
Assistant Regional Counsel
Office of Regional Counsel (ORC-2)
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CERTIFICATE OF SERVICE

I certify that the original and foregoing Answer 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 were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Ivan Lieben
Assistant Regional Counsel
Office of Regional Counsel (ORC-2)
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Dated: January 19, 2010

s/Donna McGinnis

