



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

REPLY TO THE ATTENTION OF:

July 31, 2009

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460

Re: In the Matter of: SuperClean Brands, Inc., St. Paul, Minnesota
Docket No. EPCRA-05-2009-0016
Notice of Filing

Dear Chief Judge Biro:

This letter is to notify you that Complainant's Rebuttal Prehearing Exchange was filed in the above-referenced matter on July 31, 2009. A copy of the filing is enclosed.

Sincerely,

A handwritten signature in black ink that reads "Terence Stanuch".

Terence Stanuch
Associate Regional Counsel
Attorney for Complainant

Enclosure



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

REPLY TO THE ATTENTION OF:

July 31, 2009

Sherry L. Stenerson, Esq.
General Counsel
SuperClean Brands, Inc.
1380 Corporate Center Curve, Suite 200
Eagan, MN 55121

Re: In the Matter of: SuperClean Brands, Inc., St. Paul, Minnesota
Docket No. EPCRA-05-2009-0016
Notice of Filing

Dear Ms. Stenerson:

This letter is to notify you that Complainant's Rebuttal Prehearing Exchange was filed in the above-referenced matter on July 31, 2009. A copy of the filing is enclosed.

Please do not hesitate to call me at (312) 886-8044, if you have any questions regarding this filing.

Sincerely,

A handwritten signature in black ink that appears to read "Terence Stanuch".

Terence Stanuch
Associate Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
JUL 31 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:

SuperClean Brands, Inc.
St. Paul, Minnesota

Respondent.

Docket No. EPCRA-05-2009-0016

COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE

Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA or Agency), Region 5, by and through her attorney, Terence Stanuch, and pursuant to the Court's May 11, 2009 Prehearing Order, hereby submits her Rebuttal Prehearing Exchange regarding the above-captioned case and states the following:

1. Regarding Respondent's response to 3(A) of the Prehearing Order: *A narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for Respondent's denial of the truth of the allegation contained in paragraph 26 of the Complaint.*

Paragraph 26 of the Complaint states that “[a]s of February 27, 2009, Respondent still has not submitted to the Administrator of U.S. EPA a Form R for methanol for the 2003 calendar year.” In response to paragraph 26, Respondent contends that it submitted the Form R for methanol for 2003 several times: first on October 1, 2004; then again on October 3, 2005; and then once again on March 5, 2009.

The standard Form R for 2003, and section A.7.c of the *Toxic Chemical Release Inventory Reporting Forms and Instructions, Revised 2003 Version* (Complainant's Rebuttal Exhibit No. 1) specifies that paper Forms R should be sent to the TRI Data Processing Center in Lanham, Maryland, and the appropriate State office. Section A.7.c also states that if a report is not received by both U.S. EPA and the State, the submitter is considered out of compliance and subject to enforcement action.

The only way for the government to determine if a Form R has been submitted is by either actually receiving the Form R at the TRI Data Processing Center, or by Respondent providing some other documentary proof of mailing indicating that the Form R in question was indeed mailed on the date that Respondent said it was mailed. In this case, the only Form R for methanol for 2003 from Respondent in the TRI Database was received by the government on March 10, 2009, with a postmark of March 5, 2009. This postmark date, which is the date the Agency considers as the date of filing rather than the date the Form R is actually received, is still six days after the February 27, 2009 date specified in the Complaint.

Respondent also contends that its Form R for methanol for 2003 was submitted on October 1, 2004, because it was Respondent's "practice to complete the form and place it in the mail on the day it was signed." Unfortunately, it's a little difficult to determine from our copy of this Form R the exact date it was signed. The "Date Signed" on the first page of this Form R appears to be either October 7 or 9, 2004, but an argument could be made that the date it was signed is October 1, 2004. Regardless, the actual date is somewhat immaterial because the 2003 Form R for methanol was supposed to be submitted by July 1, 2004, not sometime in October 2004. In addition, Respondent's "Affidavit of Gene Jensen" (Respondent's Exhibit 4) states that Mr. Jenson completed and filed the Form R for methanol for 2003 in 2004 but that he was unable to locate the mail receipt showing proof of filing. The government does not have any record of receiving this Form R in 2004.

Third, Respondent also contends that the Form R for methanol for 2003 was re-submitted on October 3, 2005. In support of this contention, Respondent submitted a copy of a Certified Mail Receipt (Respondent's Exhibit 2) of a mailing sent to the TRI Data Processing Center, postmarked October 3, 2005. Unfortunately, this Certified Mail Receipt does not contain any

markings or otherwise indicate that this mailing was for the 2003 Form R for methanol. Since Respondent signed their 2004 Form R for methanol on September 30, 2005, it is likely that this October 3, 2005 mailing was for the 2004 Form R for methanol and not for the 2003 Form R for methanol. The government did receive the 2004 Form R for methanol and entered it into the TRI Database, but the government does not have any record of receiving the 2003 Form R for methanol at this time.

Finally, Complainant avers that it informed Respondent on at least one occasion, during a May 28, 2008 conference call, that the TRI Database still did not list a 2003 Form R for methanol. Complainant has no idea as to why Respondent did not submit a Form R for methanol for 2003 until March 5, 2009, but the TRI Database record indicates that the only Form R for methanol for 2003 that was received from Respondent was postmarked March 5, 2009. Therefore, the statement made in paragraph 26 of the Complaint is accurate.

2. Regarding Respondent's response to 3(B) of the Prehearing Order: *A narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for its First Defense, regarding the "unique circumstances" resulting in the failure to report, set forth on page 11 of the Answer. Include in the response copies of the affidavit and "confirmation of filing" referred to therein and any and all other evidence supporting Respondent's assertions that it submitted its Form R for 2003 on "multiple occasions" and "pursued diligent efforts to file requisite reports with appropriate authorities."*

Respondent explains that certain unique business circumstances in 2004 and 2005 resulted in its Forms R for methanol for 2003, 2004 and 2005 being submitted late and states that these circumstances are not likely to recur. However, all regulated facilities are strictly liable for complying with all the requirements of EPCRA and its implementing regulations, including the requirements that certain chemical emissions must be reported on Forms R and the requirement to submit those forms by July 1 of the following year for the previous calendar year's usage.

Complainant understands the circumstances which caused Respondent to not submit their Forms R for methanol for 2003, 2004 and 2005 by the required due date, and possibly caused Respondent to not even realize that they had to submit Forms R for ethylene glycol for 2004 and 2005. However, the Agency simply cannot ignore these violations just because Respondent was preoccupied with other matters. Neither EPCRA nor its implementing regulations allow a regulated facility to simply not report certain chemical emissions, or to not report those emissions by the statutory deadline, simply because of unique business circumstances. Despite the demands of business, it was Respondent's obligation to know that they had to file their Forms R for methanol for 2003, 2004 and 2005 on time, and realize that they had to file, and file on time, Forms R for ethylene glycol for 2004 and 2005. Since Respondent didn't do either of these, it is still liable for the alleged violations despite their unique business circumstances during 2004 and 2005.

3. Regarding Respondent's response to 3(C) of the Prehearing Order: *A narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for its Second Defense raising the "doctrines of accord and satisfaction, settlement and waiver, lack of jurisdiction, equitable estoppel and laches," set forth on page 11 of the Answer.*

(a). Respondent contends that it was "led to believe that it was in compliance with environmental filing and permitting requirements" because neither the U.S. EPA nor the State of Minnesota inspector informed Respondent, during the October 18, 2006 inspection of Respondent's facility, that Respondent's Forms R for methanol for 2003, 2004 and 2005 had not been filed by the required due date, "or otherwise indicate that timeliness was a critical factor." However, Respondent's response really doesn't explain why the doctrines of "accord and satisfaction, settlement and waiver, lack of jurisdiction, equitable estoppel and laches" apply to

this case. Rather, Respondent seems to be making the argument that since neither the federal nor State inspector informed Respondent that its filings for methanol for 2003, 2004 and 2005 were after the statutory due date, Complainant is somehow barred from filing a complaint against Respondent for these violations. Respondent's defense is inapplicable for three reasons.

First, Respondent mischaracterizes the intent and scope of the October 18, 2006 inspection. The U.S. EPA inspector provided Respondent with a "Notice of Inspection" (Complainant's Rebuttal Exhibit No. 2). This Notice, which Respondent signed, states that the "Reason for inspection" is:

"This inspection is for the purpose of determining compliance with the Emergency Planning and Community Right-to-Know Act of 1986, Section 313 toxic chemical release reporting requirements. The scope of this inspection may include, but is not limited to: Reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing of chemical manufacturing, importing, processing, and/or use facilities, including waste handling and treatment options; taking samples and photographs, and any other inspection activities necessary to determine compliance with the act."

Nowhere in this Notice does it say that the Agency's inspector will provide Respondent with any "compliance determinations" during the course of the inspection. Further, John Myhre, the U.S. EPA inspector who conducted this inspection, will testify at hearing that he informed Respondent that the purpose of his inspection was to gather information and not to determine compliance on-the-spot. The purpose of an inspection is to obtain information which can be evaluated at a later time to determine whether a facility is complying with the required regulations. It would be a heavy burden on the Agency's inspectors if they were required to make on-the-spot compliance determinations; and an untenable restraint on environmental protection if the Agency was barred from commencing an enforcement action after a thoughtful and careful review of all

the relevant information obtain during an inspection just because the inspector didn't identify a violation at the time of his or her inspection.

Second, EPCRA does not specify a time period during which an action for civil penalties must be commenced. Therefore, the statute of limitations at 28 U.S.C. § 2462 is applicable to this proceeding. 28 U.S.C. § 2462 states, in part:

“Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued . . .”

Since Respondent's Form R for methanol for 2003 was required to be submitted by July 1, 2004, the Agency had five years from that date, until July 1, 2009, in which to file a complaint for this violation. Complainant filed its Complaint against Respondent, which included this alleged violation for 2003, on March 17, 2009, well before the five year statute of limitations expired for this claim.

Third, the October 18, 2006 inspection was obviously after July 1, 2006, the due date for Respondent's submittal of its 2005 Form R for methanol and well past the due dates for submitting Forms R for methanol for 2003 and 2004. Even if the U.S. EPA or State inspector had noticed that Respondent's Forms R for methanol for 2003, 2004 and 2005 had been submitted after the required due dates, Respondent was already in violation of these EPCRA requirements. The federal government cannot be estopped from commencing an enforcement action simply because an inspector didn't identify a violation at his or her first opportunity.

(b). Respondent contends that the September 7, 2005 Air Pollutant Emissions Inventory Report from the Minnesota Pollution Control Agency (Respondent's Exhibit 6) gave no indication that Respondent “somehow failed to comply with environmental compliance requirements” and,

therefore, "had no reason to believe there was anything to correct, voluntarily report, or otherwise needed [sic] bring itself into compliance." However, the very first sentence of this letter states that "[t]he purpose of this letter is to inform you (i.e. Respondent) that the Minnesota Pollution Control Agency (MPCA) staff considers the method of calculating Hazardous Air Pollutants (HAP) emissions from your facility described in Wenck's technical memorandum dated August 30, 2005, acceptable." The next sentence then requests Respondent to submit an application for a Capped Air Permit by October 3, 2005.

It's very clear from this letter that its only purpose is to inform Respondent that its method of calculating HAPs is acceptable. There is nothing in this letter which even mentions EPCRA or Forms R, or tells Respondent that it is in compliance with any environmental statute or regulation. This letter is simply a follow-up to an ongoing discussion between Respondent and MPCA regarding the need for Respondent to obtain an air permit. This letter has absolutely nothing to do with the violations alleged in the Complaint.

(c). Finally, Respondent claims that since it had already filed Tier II reports pursuant to EPCRA which contained very similar information to that contained in its submitted Forms R, the public purpose of EPCRA was met, the public was thoroughly informed, and the risk of harm to the community for delayed and missing filings was extremely low. However, Respondent fails to acknowledge that Tier II forms and Forms R have two very different purposes.

Tier II forms provide information to state and local emergency planning agencies, and local fire departments, of the chemicals present in regulated facilities. For any hazardous chemical used or stored in a workplace, facilities must maintain a material safety data sheet (MSDS) and submit that MSDS (or a list of the chemicals) to their State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and local fire department. Facilities must

also report an annual inventory of these chemicals by March 1 of each year to their SERC, LEPC and local fire department.

In contrast, Forms R are filed to report on the actual air emissions of chemicals from a facility. Even though Tier II reports must be made available to the public, they do not inform anyone as to what a regulated facility is emitting into the ambient air. Respondent contends that "the risk of harm to the community for delayed and missing filings was extremely low." This is misleading because the purpose of Forms R is not to address the risk of harm posed to a community, but to provide the community with appropriate and sufficient information so that the community can determine whether it is at risk from exposure to these chemicals. Delayed or missing filings are completely contrary to the purposes of the Emergency Planning and *Community-Right-to-Know Act* (emphasis added) because a community cannot make an informed decision about its risk to these chemicals if the information, to which it has a right-to-know, is either outdated or just plain missing. Providing timely information is necessary to fulfill the purpose and intent of EPCRA.

4. Regarding Respondent's response to 3(D) of the Prehearing Order: *If Respondent takes the position that it is unable to pay the proposed penalty, a copy of any and all documents it intends to rely upon in support of such position.*

Respondent stated that this question was "not applicable" to this case, and Respondent has chosen to not assert an inability-to-pay claim in previous discussions with the Agency. Complainant agrees that Respondent's financial ability to pay a civil penalty should not be taken into account in determining whether, or how much, a civil penalty should be assessed for the violations alleged in the Complaint.

5. Regarding Respondent's response to 3(E) of the Prehearing Order: *If Respondent takes the position that the proposed penalty should be reduced or eliminated on any other grounds, a detailed statement of such position, and a copy of any and all documents it intends to rely upon in support of such position.*

Respondent states that the proposed penalty should be reduced or eliminated for several reasons.

(a). Respondent first claims that Complainant "could have utilized one of the other, lower quantity hazardous materials in calculating the proposed penalties." Respondent asserts that Complainant should have utilized Matrix Level C of the EPCRA penalty policy instead of Matrix Level B. However, Complainant applied Matrix Level B because that level was required by the penalty policy based upon the amount of methanol that Respondent used during the 2003, 2004 and 2005 calendar years. The penalty policy is very specific and does not give the Agency any discretion to select any other matrix level for this case. To do so would be an arbitrary and capricious application of the penalty policy.

Second, Respondent argues that since it did eventually file all the required Forms R, "the potential for harm to the community through its lack of knowledge of the presence of hazardous chemicals is extremely low." However, there are annual publication cut-off dates and Forms R received after those cut-off dates do not make it into the public data release for that year. Consequently, the public could very well be misled by reading TRI reports that lack data about toxic chemical emissions in their neighborhoods because such data wasn't submitted by the required due dates.

Third, Respondent states that it has no history of a prior violation. This is incorrect because, as explained on page 13 of Complainant's Initial Prehearing Exchange, Complainant could have increased the penalty proposed in the Complaint based on Respondent's 2006

violations of section 312(a) of EPCRA, 42 U.S.C. § 11022(a). However, the penalty policy does give the Agency some discretion as to whether to increase a proposed penalty for a history of prior violation and the Agency chose not to increase the penalty proposed in this matter.

(b). Respondent claims that Complainant's decision to assess a Category I penalty for the violation relating to the submittal of Form R for methanol for 2003 is excessive and that a Category II penalty should have been used. As discussed on page 9 of Complainant's Initial Prehearing Exchange, Category I penalties are applied to Form R submittals that are more than one year late, and Category II penalties are applied to Form R submittals that are less than one year late. As stated previously, the TRI Data Processing Center did not receive Respondent's 2003 Form R for methanol until March 10, 2009, and Respondent has not been able to provide any documentation or postmarked receipt which indicates that this Form R was submitted before March 5, 2009. Consequently, Category I is the appropriate category for this alleged violation.

(c). Respondent also argues that it has a consistent record of filing Forms R for methanol and that it is entitled to a reduction in the proposed penalty for its attitude and cooperative posture throughout the enforcement process. In essence, Respondent is arguing that it should be rewarded for simply complying, albeit belatedly, with EPCRA's Form R filing requirements. Complainant does not believe that any regulated facility is entitled to be rewarded with a reduced penalty for merely attempting to, or offering to, comply with any statutory or regulatory requirements. Compliance with environmental statutes and regulations is mandated by law. Respondent should not be rewarded for eventually doing what they were supposed to do in the first place.

(d). Finally, Respondent generally asserts that the proposed penalty should be reduced because: (1) the alleged violations pose a minor potential for harm and, as such, should be

considered a minor deviation from the regulatory requirements; (2) Respondent has made good faith efforts to comply; (3) Respondent is a small business; and (4) there may be other factors as justice may require. However, the EPCRA penalty policy already takes into consideration all of these arguments. The Introduction to the EPCRA penalty policy (Complainant's Prehearing Exchange Exhibit No. CX-18) states:

"The purpose of this Enforcement Response Policy is to ensure that enforcement actions for violations of EPCRA § 313 and the PPA (i.e. Pollution Prevention Act, parenthetical added) are arrived at in a fair, uniform and consistent manner; that the enforcement response is appropriate for the violation committed; and that persons will be deterred from committing EPCRA § 313 violations and the PPA [sic]."

Through a proper application of the matrix and category levels specified by the penalty policy, Complainant has already considered all these factors in calculating the penalty proposed in the Complaint. Respondent maintains that "the *minimum* base fine under § 313 is appropriate" in this case, suggesting that the penalty policy could be interpreted differently to arrive at a proposed penalty that is less than the penalty proposed in the Complaint. To the contrary, Complainant avers that the penalty proposed in the Complaint was strictly calculated in accordance with the EPCRA penalty policy and "is" the minimum base fine under § 313.

Respondent's Forms R submittals for methanol for 2003, 2004 and 2005, and for ethylene glycol for 2004 and 2005, were all submitted after their respective due dates. Respondent has not submitted any evidence in its Initial Prehearing Exchange, nor has it made any compelling arguments therein, to prove that it is not liable for violating section 313 of EPCRA, 42 U.S.C. § 11023, or that the penalty proposed in the Complaint was calculated incorrectly. Consequently, in accordance with the Court's May 11, 2009 Prehearing Order, Complainant intends to file motions for accelerated decisions as to liability and penalty pursuant to 40 C.F.R. § 22.20(a), on or before

August 28, 2009, which is within thirty days after the July 31, 2009 due date for filing this
Rebuttal Prehearing Exchange.

Respectfully Submitted,

Terence Stanuch

Terence Stanuch
Associate Regional Counsel

Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590
Phone: (312) 886-8044
stanuch.terry@epa.gov

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

Complainant's Rebuttal Prehearing Exchange
Exhibit No. 1



EPA 260-B-04-001
February 2004

Toxic Chemical Release Inventory Reporting Forms and Instructions

Revised 2003 Version

**Section 313
of the Emergency Planning and
Community Right-to-Know Act
(Title III of the Superfund Amendments
and Reauthorization Act of 1986)**



General Information

of the submitting facility. Please send completed diskettes, along with a cover letter and an original certification signature from each submitting facility to:

TRI Data Processing Center
P.O. Box 1513
Lanham, MD 20703-1513

Certified mail, overnight mail, and hand-delivered submissions *only* should be addressed to:

Attn: TRI Magnetic Media Submission
TRI Data Processing Center
c/o Computer Sciences Corporation
Suite 300
8400 Corporate Drive
Landover, MD 20785-2294
301 429-5005

If you are submitting reports on magnetic media/diskette to EPA, you must enclose a cover letter signed by the official listed in Section 3 of Part I of the Form R or Form A (name and official title of senior management official) for *each separate facility*. The *TRI-ME* software assists the user in preparing cover letters for both EPA and states. The letter on page 8 is a sample. Since you are filing by diskette, **do not** include duplicate paper copies of the reports that are on the diskette.

A.7.b.2 Submitting by Diskette to States

Submitters must submit a copy of each Form R or Form A to the appropriate state agency. As of the publication of this book and the TRI Reporting Software, the following states confirmed that they accept diskette submissions:

| AK | GA | LA | NH | OR | VA |
|-----------------|----|----|----|-----------------|----|
| AL | HI | MD | NJ | PA | VT |
| AZ ¹ | IA | MI | NM | PR | WA |
| CA | ID | MN | NV | SC ² | WI |
| CO | IL | MO | NY | SD | WV |
| DE | IN | MT | OH | TX | WY |
| FL | KS | ND | OK | UT | |

¹Arizona Emergency Response Commission accepts diskette submissions while the Arizona Dept. of Environmental Quality accepts only paper submissions. Submissions must be sent to both agencies.

²South Carolina accepts only diskette submissions.

If your state is not listed here, please contact your state office to confirm that paper submissions are required. A list of state contacts can be found in Appendix F.

A.7.c How to Submit Paper Form R(s) and/or Form A(s)

Submissions must be sent to both EPA and the state (or the designated official of an Indian tribe). If a report is not received by both EPA and the state (or the designated official of an Indian tribe), the submitter is considered out of compliance and subject to enforcement action. Send reports to EPA by regular mail to:

TRI Data Processing Center
P.O. Box 1513
Lanham, MD 20703-1513
Attn: Toxic Chemical Release Inventory

Certified mail, overnight mail, and hand-delivered submissions *only* should be addressed to:

TRI Data Processing Center
c/o Computer Sciences Corporation
Suite 300
8400 Corporate Drive
Landover, MD 20785-2294
301 429-5005

Also send a copy of the report to the state in which the facility is located. ("state" also includes: the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, Marshall Islands, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the U.S. has jurisdiction and Indian Country.) Refer to Appendix F for the appropriate state submission addresses.

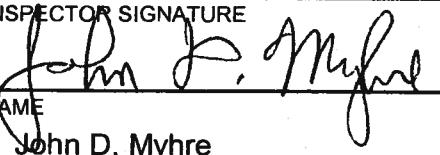
Facilities located on Indian land should send a copy to the Chief Executive Officer of the applicable Indian tribe. Some tribes have entered into a cooperative agreement with states; in this case, report submissions should be sent to the entity designated in the cooperative agreement.

**Complainant's Rebuttal Prehearing Exchange
Exhibit No. 2**

NOTICE OF INSPECTION
U.S. ENVIRONMENTAL PROTECTION AGENCY
Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)

| | | | | |
|--|------------------------|---------------------|---|---------------------|
| 1. INVESTIGATION IDENTIFICATION | | | 2. TIME | 3. FIRM NAME |
| DATE Oct. 18, 2005 | INSPECTOR NO. FEP57 | DAILY SEQ. NO. 1 | 9:00 AM | Fox Packaging |
| 4. INSPECTOR ADDRESS UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5, DT-8J 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590 | | | 5. FIRM ADDRESS 51 Maryland Ave. E. St. Paul, MN 55117 | |

Reason for inspection: This inspection is for the purpose of determining compliance with the Emergency Planning and Community Right-to-Know Act of 1986, Section 313 toxic chemical release reporting requirements. The scope of this inspection may include, but is not limited to: Reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing of chemical manufacturing, importing, processing, and/or use facilities, including waste handling and treatment options; taking samples and photographs, and any other inspection activities necessary to determine compliance with the act.

| | | | |
|--|----------------------------|--|-----------------|
| INSPECTOR SIGNATURE | | RECIPIENT SIGNATURE | |
|  | |  | |
| NAME | John D. Myhre | NAME | Gene Jensen |
| TITLE | EPCRA Compliance Inspector | DATE SIGNED | 18 Oct 06 |
| | | TITLE | General Manager |
| | | DATE SIGNED | 10-18-06 |

In the Matter of: SuperClean Brands, Inc., Respondent
Docket No. EPCRA-05-2009-016.

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complainant's Rebuttal Prehearing Exchange regarding: In the Matter of: SuperClean Brands, Inc., Docket No. EPCRA-05-2009-016, was filed with the Regional Hearing Clerk, U.S. EPA, Region 5, on July 31, 2009, and that copies were sent this day in the following manner to the addressees listed below:

Copy by government pouch mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave. NW
Washington, DC 20460

Copy by regular U.S. mail to:

Attorney for Respondent:

Sherry L. Stenerson, Esq.
General Counsel
SuperClean Brands, Inc.
1380 Corporate Center Curve, Suite 200
Eagan, MN 55121

Dated this 31 day of July, 2009.

Wanda Henry
Wanda Henry
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Chicago, Illinois

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JUL 31 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY