



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

MAR 01 2011

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8920 0074

Mr. Charles Santangelo  
Chief Executive Officer  
D.A. Stuart Company  
4580 Weaver Parkway  
Warrenville, Illinois 60555

Re: In the Matter of D.A. Stuart Company, Docket No: **TSCA-05-2011-0003**

Dear Mr. Santangelo:

Enclosed is a complaint filed by the U.S. Environmental Protection Agency, Region 5 against D.A. Stuart Company under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a) and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22.

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 (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later. If you choose to file an answer, you must mail a copy of it to Michael Berman, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

In addition, whether or not you request a hearing, you may request an informal settlement conference. To request a conference, or if you have any questions about this matter, you may contact Michael Berman, Associate Regional Counsel at (312) 886-6837.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce F. Sypniewski".

Bruce F. Sypniewski  
Acting Director  
Land and Chemicals Division

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U.S. EPA REGION 5  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:	)	Docket No. TSCA-05-2011-0003
	)	
D.A. Stuart Company	)	Proceeding to Assess a Civil Penalty
Warrenville, Illinois	)	Under Section 16(a) of the Toxics Substances
	)	Control Act, 15 U.S.C. § 2615(a)
Respondent.	)	
_____	)	

Notice of Treatment of Confidential Business Information

Portions of the attached Complaint require use of information which Respondent submitted to the U.S. Environmental Protection Agency as Confidential Business Information ("CBI"). Information in the Complaint constituting or based on CBI has been deleted as is indicated by the following term: "CBI deleted." The original Complaint containing CBI has been filed with the Regional Hearing Clerk and is being kept in the secure files of the Land and Chemicals Division, EPA, Region 5. It will be treated as confidential unless and until Respondent waives confidentiality thereto or the EPA releases the information in accordance with 40 C.F.R. Part 2.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
D.A. Stuart Company )  
Warrenville, Illinois )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-05-2011-0003  
Proceeding to Assess a Civil Penalty  
Under Section 16(a) of the Toxics Substances  
Control Act, 15 U.S.C. § 2615(a)

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USEPA  
REGION 5

**Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is D.A. Stuart Company (D.A. Stuart), a corporation doing business in the State of Illinois.

**Statutory and Regulatory Background**

4. Section 8(b)(1) of TSCA, 15 U.S.C. § 2607(b)(1), requires the Administrator to compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States. This list is known as the "Master Inventory File," 40 C.F.R. § 710.23.
5. Section 8(a)(1)(A) of TSCA, 15 U.S.C. § 2607(a)(1)(A), states, in pertinent part, that the Administrator shall promulgate rules under which each person who manufactures or processes or proposes to manufacture or process a chemical substance shall maintain such

records, and shall submit to the Administrator such reports, as the Administrator may reasonably require.

6. Under the authority of Section 8(a) of TSCA, 15 U.S.C. § 2607(a), the Administrator issued the Inventory Reporting Regulations on December 23, 1977 (42 Fed. Reg. 64572). EPA issued the "Partial Updating of TSCA Inventory Data Base" rule ("Inventory Update Rule" or "IUR") pursuant to Section 8 of TSCA, 15 U.S.C. § 2607, on June 12, 1986 (51 Fed. Reg. 21447). EPA has amended these regulations which are codified at 40 C.F.R. Part 710.

7. The IUR requirements for the reporting year 2006 were amended on January 7, 2003 (68 Fed. Reg. 890).

8. The term "chemical substance" is defined at 40 C.F.R. § 710.3 as any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any chemical element or uncombined radical.

9. The term "reporting year" is defined at 40 C.F.R. § 710.43 as the calendar year in which information to be reported to EPA during an IUR submission period is generated, i.e., calendar year 2005 and the calendar year at 5-year intervals thereafter.

10. The term "manufacture or import 'for commercial purposes'" is defined at 40 C.F.R. § 710.3, in part, as to manufacture, produce, or import with the purpose of obtaining an immediate or eventual commercial advantage, and includes, for example, the manufacture or import of any amount of a chemical substance or mixture for commercial distribution.

11. The term “person” is defined at 40 C.F.R. § 710.3 as any natural or juridical person including any individual, corporation, partnership, or association, any State or political subdivision thereof, or any municipality, any interstate body and any department, agency, or instrumentality of the Federal Government.

12. The term “site” is defined at 40 C.F.R. 710.3 as a contiguous property unit.

13. 40 C.F.R. § 710.45 requires information to be reported for any chemical substance which is in the Master Inventory File at the beginning of a submission period, described in § 710.53 unless that chemical substance is specifically excluded by § 710.46.

14. 40 C.F.R. § 710.48 states that, except as provided in §§ 710.49 and 710.50, any person who manufactured (including imported) for commercial purposes 25,000 lbs. or more of a chemical substance described in § 710.45 at any single site owned or controlled by that person at any time during calendar year 2005 or during the calendar year at 5-year intervals thereafter is subject to the reporting requirements of Part 710.

15. 40 C.F.R. § 710.52 states that any person who must report under this subpart must submit the information described in this section to EPA for each chemical substance described in § 710.45 that the person manufactured for commercial purposes in an amount of 25,000 pounds or more at a single site during calendar year 2005 or during the calendar year at 5-year intervals thereafter.

16. 40 C.F.R. § 710.53 requires all information reported to EPA in response to the Inventory Update Report requirements to be submitted during an applicable submission period. The first submission period was from August 25, 2006 to March 23, 2007. Any person described in § 710.48(a) must report during each submission period for each chemical substance described

in § 710.45 that the person manufactured (including imported) during the preceding calendar year (i.e. the “reporting year”).

17. Section 15(3) of TSCA, 15 U.S.C. § 2614(3), among other things, makes it unlawful for any person to fail to submit reports, notices or other information, as required by TSCA, or any rule promulgated thereunder.

18. Section 16 of TSCA, 15 U.S.C. § 2615, states that any person who violates a provision of Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty.

#### **General Allegations**

19. At all times relevant to this Complaint, Respondent was a person, as defined at 40 C.F.R. § 710.3.

20. During calendar year 2005, Respondent owned or controlled a site at 9100 Freeland Avenue, Detroit, Michigan 48228, hereafter referred to as the “Detroit facility.”

21. At the Detroit facility, Respondent manufactured the chemical substances in Table 1, below, in the listed quantities:

Table 1

Chemical Name	Pounds (approximate)
[CBI deleted] (Chemical Abstracts Service (CAS) number [CBI deleted]), and hereafter referred to as Chemical A	[CBI deleted]
Carboxylic acids, di-, C6-12 compounds with ethanolamine (CAS number 68937-73-5)	[CBI deleted]
Fatty acids, C8-18 and C18 unsaturated, compounds with isopropanolamine (CAS number 68855-73-2)	[CBI deleted]
Fatty acids, tall-oil, compounds, with ethanolamine (CAS number 68132-47-8)	[CBI deleted]
Octanoic acid, compound with 2,2',2''-nitrilotris[ethanol] (1:1) (CAS number 22919-56-8)	[CBI deleted]
Fatty acids, tall-oil compounds with triethanolamine (CAS number 68132-46-7)	[CBI deleted]
Fatty acids, tall-oil, compounds with 2-amino-2-methyl-1-propanol (CAS number 97701-21-7)	[CBI deleted]
Octanoic acid, sodium salt (CAS number 1984-06-1)	[CBI deleted]
Boric acid (H3BO3) compounds with 2-aminoethanol (CAS number 26038-87-9)	[CBI deleted]
Boric acid (H3BO3) compounds with 2,2',2''-nitrilotris[ethanol](1:1) (CAS number 10220-75-4)	[CBI deleted]
Fatty acids, tall-oil, potassium salts (CAS number 61790-44-1)	[CBI deleted]
Boric acid (H3BO3) compounds with 2-aminoethanol(1:1) (CAS number 68586-07-2)	[CBI deleted]
[CBI deleted] (CAS number [CBI deleted]), and hereafter referred to as Chemical B	[CBI deleted]
9-Octadecenoic acid (9Z)- compounds with 2,2',2''-nitrilotris[ethanol] (1:1) (CAS number 2717-15-9)	[CBI deleted]
2,5-Furandione, dihydro-, monopolyisobutylene derivatives (CAS number 67762-77-0)	[CBI deleted]
[CBI deleted] (CAS number [CBI deleted]), and hereafter referred to as Chemical C	[CBI deleted]
[CBI deleted] (CAS number [CBI deleted]), hereafter referred to as Chemical D	[CBI deleted]

22. At all times relevant to this Complaint, the chemical substances listed in Table 1, above, were listed on the Master Inventory File.

23. Respondent is not exempt from the reporting requirements of 40 C.F.R. Part 710 for its manufacture for commercial purposes of the quantities of the chemical substances listed in Table 1 above by any provision of 40 C.F.R. § 710.49.

24. Respondent is not exempt from the reporting requirements of 40 C.F.R. Part 710 for its manufacture for commercial purposes of the quantities of the chemical substances listed in Table 1 above by any provision of 40 C.F.R. § 710.50.

25. On or about September 4, 2008, Respondent submitted the Form U Partial Updating of the TSCA Inventory Data Base Site Report (EPA Form 7740-8 or Form U) for reporting year 2006 to EPA.

26. On or about September 2, 2008, Respondent voluntarily disclosed the violation alleged in this Complaint by letter to Complainant.

#### Specific Allegations

##### Count 1

27. Complainant incorporates by reference the allegations contained in paragraphs 1 through 26 of this Complaint.

28. During calendar year 2005, Respondent manufactured the chemical substances listed in Table 1 for a commercial purpose, as defined at 40 C.F.R. § 710.3, in the amounts listed in Table 1.

29. On or about September 4, 2008, Respondent submitted the Form U Partial Updating of the TSCA Inventory Data Base Site Report (EPA Form 7740-8 or Form U) for reporting year 2006 to EPA.



30. Respondent failed to submit the Form U between August 25, 2006 and March 23, 2007.

31. Respondent's failure to submit the Form U between August 25, 2006 and March 23, 2007 constitutes a violation of 40 C.F.R. §§ 710.52 and 710.53 and Section 15(3) of TSCA, 15 U.S.C. § 2614(3).

**Proposed Civil Penalty**

32. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violation alleged in this Complaint as follows:

**Count 1**

Failure to submit an Inventory Update Report.....\$21,922

**Total Proposed Civil Penalty .....\$21,922**

33. In accordance with the *Policy on Incentives for Self-Policing, Disclosure, Correction, and Prevention of Violations*, dated April 11, 2000, Complainant is reducing the proposed civil penalty by 75 percent because of Respondent's voluntary disclosure of the alleged violations.

**Adjusted Total Proposed Civil Penalty.....\$5,481**

34. In determining the amount of any civil penalty, Section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

35. EPA calculates penalties by applying its *Enforcement Response Policy for Reporting and Recordkeeping Requirements for TSCA Sections 8, 12, and 13*, effective June 1, 1999 (Response Policy) and the *Policy on Incentives for Self-Policing, Disclosure, Correction, and Prevention of Violations*, dated April 11, 2000 (Self Disclosure Policy). The Response Policy and Self Disclosure Policy provide a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. Copies of the Response Policy and Self Disclosure Policy are included 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 is a copy of the Consolidated Rules.

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

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include 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 West Jackson Boulevard  
Chicago, Illinois 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 Michael Berman, Associate Regional Counsel to receive any answer and subsequent legal

documents that Respondent serves in this proceeding. You may telephone Mr. Berman at (312) 886-6837. His address is:

Michael Berman (C-14J)  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**Penalty Payment**

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, United States of America" and by delivering the check to:

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

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Michael Berman and to:

Claudia Niess (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**Answer and Opportunity to Request a Hearing**

If Respondent contests any material fact upon which the Complaint is based 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 according to the Consolidated Rules.

In counting the 30-day time 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 EPA under Section 22.27(c) of the Consolidated Rules.

### **Settlement Conference**

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Michael Berman at the address provided above.

Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

### **Continuing Obligation to Comply**


Respondent's payment of the civil penalty will not satisfy Respondent's legal obligation to comply with TSCA and any other applicable federal, state, or local law.

### **Consent Agreement and Final Order**

EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with Respondent in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement

signed by both parties is binding when the Regional Administrator signs the Final Order and it is filed with the Regional Hearing Clerk.

2/10/11  
Date

  
Bruce F. Sypniewski  
Acting Director  
Land and Chemicals Division

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**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this CBI Redacted Complaint and one original CBI Complaint in the resolution of the civil administration action involving D.A. Stuart Company was filed on March 1, 2011, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7001 0320 0005 8920 0074, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," to:

Mr. Charles Santangelo  
Chief Executive Officer  
D.A. Stuart Company  
4580 Weaver Parkway  
Warrenville, Illinois 60555

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Michael Berman, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. TSCA-05-2011-0003

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