



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

REPLY TO THE ATTENTION OF:
C-14J

BY OVERNIGHT POUCH MAIL

William B. Moran
Administrative Law Judge
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20005

Re: Hutson Enterprises, Inc., d/b/a Sparkle Pool
Service and Supply of Indiana, Docket No. EPCRA-05-
2007-0027

Dear Judge Moran:

Please find enclosed a copy of Complainant's
Prehearing Exchange, filed recently in the above-captioned
matter. If you have any questions, please contact me at
(312) 886-0566.

Yours very truly,

Robert S. Guenther
Associate Regional Counsel

Enclosures

cc: Karen Lowell, Esquire
1683 Southwest 109th Terrace
Fort Lauderdale, Florida 33324

Ruth McNamara (SC-6J)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

HUTSON ENTERPRISES, INC.,)
d/b/a SPARKLE POOL)
SERVICE AND SUPPLY,) DOCKET NO.:
OF INDIANA,) EPCRA-05-2007-0027
INDIANAPOLIS, INDIANA,)
) JUDGE MORAN
RESPONDENT.)
)

COMPLAINANT'S PREHEARING EXCHANGE

Complainant, Chief of the Emergency Response Branch I, of the Superfund Division, Region 5, pursuant to the order of the Presiding Officer dated December 12, 2007, provides his prehearing exchange of witness lists and documents.

I. Witnesses. Complainant may call the following individuals to testify at any hearing in this matter to establish the *prima facie* case.

A. **Ruth McNamara**. Ms. McNamara is an Environmental Protection Specialist in the Chemical and Emergency Preparedness Section of the Superfund Division in Region 5. She has participated in the EPCRA section 312 enforcement programs since June 1990 and previously worked in the Emergency Response Branch of the Region's Superfund Division. Ms. McNamara can testify regarding the facts surrounding the violations, the implementation of the EPCRA 312 Tier

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II program and other matters pertaining to this enforcement action, including the general allegations made and the derivation of the penalty proposed in the Complaint.

B. **Marcus Johnson.** Mr. Johnson is an employee of the Indiana Emergency Response Commission, which is the state emergency response commission responsible for Indiana's emergency planning and response for Respondent's facility. He can testify to the State program requirements of the Tier II reporting program and the value of the information to the SERC of the information reported on the Tier II forms.

C. **Jason Ravenscroft.** Mr. Ravenscroft is an employee of the Indianapolis/Marion County Emergency Management Agency, which is the local emergency planning commission responsible for the Indianapolis community's emergency planning and response for Respondent's facility. He can testify to the LEPC program requirements of the Tier II reporting program and the value of the information to the LEPC of the information reported on the Tier II forms.

D. **A Representative of the Indianapolis Fire Department.** This witness will represent the local department responsible for the first-line emergency

planning and response for Respondent's facility. He or she can testify to the Fire Department program requirements of the Tier II reporting program and the value of the information to the Department of the information reported on the Tier II forms.

Complainant will designate a specific individual with sufficient notice to Respondent, but in no event less than 30 days prior to the convening of an evidentiary hearing in this matter.

E. **Timothy Hutson.** Mr. Hutson is Respondent's President and can thus testify regarding the nature of Respondent's business, Respondent's implementation of the Tier II notification requirements and to Respondent's general financial condition.

F. **Maribelle Weidoff, C.P.A.** Ms. Weidoff is a certified public accountant and controller with over 15 years of experience in both public and corporate financial management. She received her bachelor's degree from Marquette University in 1992 and received her MBA in 2005. She worked four years in public accounting preparing compilations of financial statements, tax returns and analysis of financial statements. Currently, she is controller for a small business and responsible for all financial matters,

including the financial statements, financial planning and financial controls. Ms. Wiedoff has significant knowledge of models for financial forecasting, internal controls, developing and maintaining accounting policies and procedures, and overseeing accounting departments.

Ms. Weidoff will be offered as an expert to render an opinion on the financial capability of the Respondent to pay the penalty sought by Respondent.

II. Documents. Complainant may introduce the following listed documents at any hearing of this matter to establish its *prima facie* case. Copies of these documents are attached.

A. "Tier II Forms" Two Form Rs associated with the violations alleged in the Complaint, one each for calendar years 2003 and 2004, signed and dated November 17, 2005. Each completed form contains associated Manufacturer's Material Safety Data Sheets ("MSDSs") for chlorine and sodium Sesquicarbonate. (Complainant's Ex. #1)

B. Reports from the Dun & Bradstreet Corporate Data Reporting Service. (Complainant's Ex. #2)

C. "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and

Community Right-to-know Act and Section 304 of the Comprehensive Environmental Response, Compensation and Liability Act," dated September 30, 1999.

(Complainant's Ex. #3)

D. "Policy on Civil Penalties - EPA General Enforcement Policy #GM - 21," dated February 16, 1984.

(Complainant's Ex. #4)

E. "A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties - EPA General Enforcement Policy #GM - 22," dated February 16, 1984. (Complainant's Ex. #5)

F. Information Request. (Complainant's Ex. #6)

G. Information Request Response. (Complainant's Ex. #7)

H. Four worksheets, each corresponding to a count in the Complaint, prepared by Ms. McNamara calculating the gravity-based penalty using the "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-know Act and Section 304 of the Comprehensive Environmental Response, Compensation and Liability Act," dated September 30, 1999, and considering the specific facts of this matter. (Complainant's Ex. #8)

J. Financial Information submitted by Respondent. This information, of which Respondent is in possession as the source, has been claimed confidential business information. Adequate protections for the documents will be made for them at hearing of this matter in accordance with 40 C.F.R. part 2. If the Presiding Officer wishes to view them prior to hearing, we will promptly make arrangements to provide them while maintaining the confidential nature of the documents.

III. Complainant's Justification of the Proposed Penalty. Complainant's explanation of the penalties proposed for each of the four counts alleged in the Complaint is included with the documents provided to Respondent as Complainant's Exhibit 8.

IV. Complainant's Discussion Regarding the Paperwork Reduction Act. In an effort to reduce the regulatory reporting burden on the public, Congress enacted the Paperwork Reduction Act ("PRA"), 44 U.S.C. §§ 3501-3520. The PRA requires an agency, in requiring collection and reporting of information by the public, to: 1) first obtain review of the requirement by the Office of Management of Budget, evidenced by an eight digit control number, and 2) display the control number upon any document

associated with the request. The Public Protection provision of the PRA, 44 U.S.C. § 3512, insulates the public from penalties resulting from a failure to respond to a federal collection of information which does not bear a valid OMB control number.

Complainant asserts, however, that the Public Protection provision of the PRA does not apply to the facts of this matter. The PRA, at 44 U.S.C. § 3502(3), defines "collection of information" to mean "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions *by or for an agency ...*" 44 U.S.C. § 3502(3) (emphasis supplied).

Clearly, section 312 of EPCRA, 42 U.S.C. § 11022, the provision of which Complainant alleges Respondent violated, requires the submission of information by requiring regulated facilities to file Tier forms with state and local emergency response and planning agencies reflecting storage of hazardous chemicals at their facilities. Section 312, however, is *not* a requirement imposed by U.S. EPA through its rulemaking or information gathering authority, but rather is a requirement imposed by the U.S. Congress in the enactment of EPCRA statute. As such, Complainant asserts that the Public Protection provision of the PRA, 42 U.S.C. § 3512, does not apply to collections of

information under section 312 of EPCRA and thus cannot act to bar collection of penalties this case.

U.S. EPA has, however, promulgated 40 C.F.R. § 370.25, a regulation which redundantly requires the same submissions mandated in section 312 of EPCRA. That regulation, though not at issue in this matter, bears the current control number of 2050-0072. See 40 C.F.R. part 9.

V. Complainant's Preferred Location for Hearing and Estimate of Time Needed to Present its *Prima Facie* Case.

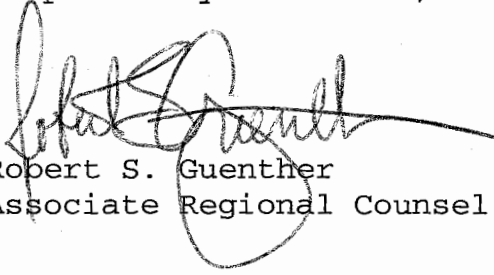
Complainant requests that the Presiding Officer convene any hearing in this matter in Indianapolis, Indiana. In the alternative, Complainant suggests convening hearing of this matter in Chicago, Illinois, or in Washington, D.C.

Complainant estimates that it should need between a day to a day and a half within which to present its *prima facie* case, depending on time needed for objections and cross-examination.

VI. Reservation of Rights. Complainant reserves its rights to alter or amend this prehearing exchange, upon due

notice to opposing counsel and consent of the Presiding
Officer.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert S. Guenther", written over the typed name and title.

Robert S. Guenther
Associate Regional Counsel

In the Matter of:
Hutson Enterprises., Inc., d/b/a
Sparkle Pool Service & Supply of Indiana,
Docket No. EPCRA-05-2007-0027

CERTIFICATE OF SERVICE

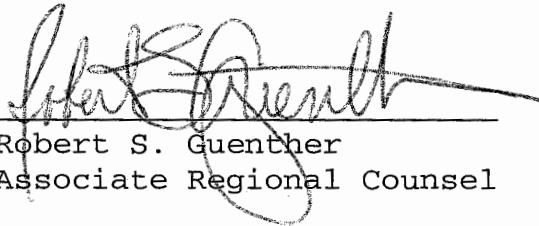
I certify that the original of Complainant's Prehearing Exchange was filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, on March 14, 2008, and that true and accurate copies were hand-delivered or mailed by interoffice pouch or first-class U.S. Mail by the next business day to:

William B. Moran
Administrative Law Judge
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

and

Karen Lowell, Esquire
1683 Southwest 109th Terrace
Fort Lauderdale, Florida 33324

Dated: March 14, 2008



Robert S. Guenther
Associate Regional Counsel

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