



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUL 23 2008

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

John R. Miles, CEO
J. H. Miles and Company, Inc.
902 Southampton Avenue
Norfolk, Virginia 23510

RE: Emergency Planning and Community Right to Know Act ("EPCRA") Administrative Complaint
EPA Docket No. EPCRA-03-2008-0379

Dear Mr. Miles:

Enclosed you will find an Administrative Complaint concerning violations of Sections 311 and 312 of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. §§ 11021 and 11022, issued against J. H. Miles and Company, Inc. ("J. H. Miles") regarding the clam processing facility located at 902 Southampton Avenue in Norfolk, Virginia.

J. H. Miles must file an Answer to this Administrative Complaint within **thirty (30) days** of its receipt. The Answer must respond specifically to each of the allegations set forth in this Administrative Complaint. Failure to file an Answer within thirty (30) days of your receipt shall constitute an admission of the allegations made in this Administrative Complaint, and may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalty proposed in this Administrative Complaint without further proceedings. J. H. Miles may also resolve any or all of these matters by paying the proposed penalty instead of filing an Answer, as discussed in the Complaint.

J. H. Miles may choose to request a hearing to contest any matter set forth in this Administrative Complaint. Such request must be included in J. H. Miles' Answer to this Administrative Complaint. Whether or not a hearing is requested, J. H. Miles may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in J. H. Miles' Answer or J. H. Miles may contact the attorney assigned to this case:

Cynthia T. Weiss (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Ms. Weiss can be reached by telephone at (215) 814-2659.

For technical questions related to EPCRA, contact the *RCRA, Superfund and EPCRA Hotline* at (800) 424-9346, Monday through Friday, 9:00 a.m. to 6:00 p.m. (Eastern time).

Your company may qualify as a "small business" under the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"). Please see the Small Business Information enclosure accompanying this letter. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such a program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

In addition, your company may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against your company under Federal, State, or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company is subject to it.

Sincerely,



James J. Burke, Director
Hazardous Site Cleanup Division

Enclosures

cc: Michelle Price-Fay, EPCRA Coordinator (3HS61)
U.S. EPA Region III

Cynthia T. Weiss, Assistant Regional Counsel (3RC42)
U.S. EPA Region III

Virginia Department of Environmental Quality

Norfolk Fire Department

23 110335

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	)	EPA Docket No.EPCRA-03-2008-0379
J. H. Miles and Company, Inc.)	
902 Southampton Avenue)	
Norfolk, Virginia 23510,)	
)	
Respondent,)	
)	
J. H. Miles and Company, Inc.	)	Administrative Complaint and Notice
902 Southampton Avenue	)	of Opportunity for Hearing filed
Norfolk, Virginia 23510,	)	under Sections 311, 312 and 325 of the
	)	Emergency Planning and Community
	)	Right-to-Know Act, 42 U.S.C.
Facility.	)	§§ 11021, 11022 and 11045.
)	

ADMINISTRATIVE COMPLAINT

This Administrative Complaint and Notice of Opportunity for a Hearing (hereinafter "Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, delegated to the Regional Administrator by EPA Delegation No. 22-3-A, and redelegated to Complainant by EPA Region III Delegation No. 22-3-A. Further, this Complaint is being filed pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, a copy of which is enclosed with this Administrative Complaint as Attachment A.

The Complainant is the Director of the Hazardous Site Cleanup Division for the EPA Region III office. The Respondent is J. H. Miles and Company, Inc., ("Respondent" or "J. H. Miles"). Respondent is hereby notified of EPA's intention to assess penalties for violations of the requirements and prohibitions of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, and their implementing regulations, 40 C.F.R. 370. The Complaint describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

In support of its Complaint, Complainant alleges the following:

GENERAL ALLEGATIONS

1. Respondent, J. H. Miles and Company, Inc., is a Virginia corporation with its principal place of business located at 902 Southampton Avenue, Norfolk, Virginia 23510.

2. Respondent owns and operates a clam-processing facility located at 902 Southampton Avenue, Norfolk, Virginia 23510, (the "Facility"), with an SIC Code of 2092 (prepared fresh and frozen fish and seafood), and an NAICS Code of 311712 (fresh and frozen seafood processing).

3. Respondent uses ammonia (CAS No. 7664-41-7), No. 4 fuel oil (CAS No. 68476-31-3), and liquid nitrogen (CAS No. 7727-37-9) at the Facility.

4. On March 27, 2008, EPA conducted an inspection of the Facility to evaluate the Facility's compliance with Sections 302, 303, 311 and 312 of EPCRA.

COUNT I - VIOLATION OF SECTION 311 OF EPCRA - SERC

5. The allegations set forth in paragraphs 1 through 4 of this Complaint are incorporated by reference herein as though fully set forth at length.

6. As a corporation, Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and its regulations, 40 C.F.R. § 355.20.

7. At all times relevant to this Complaint, the Facility was a facility at which hazardous chemicals, ammonia, No. 4 fuel oil, and liquid nitrogen, were produced, used or stored.

8. Section 311 of EPCRA, 42 U.S.C. § 11021, as implemented by 40 C.F.R. Part 370, requires an owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical in accordance with the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility is present at any one time a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous substance ("EHS")) in a quantity equal to or greater than its applicable minimum threshold for reporting (the "threshold") established by 40 C.F.R. § 370.20(b), to submit, either MSDSs for, or a list identifying, those hazardous chemicals to the appropriate State Emergency Response Commission ("SERC"), Local Emergency Planning Committee ("LEPC"), and Local Fire Department with jurisdiction over the facility, on or before October 17, 1990, or within 90 days after meeting the threshold.

9. The SERC for the Facility is, and has been at all times relevant to this Complaint, the Virginia Department of Environmental Quality located at 629 East Main Street, Mezzanine Level, Richmond, Virginia 23219.

10. Ammonia, No. 4 fuel oil and liquid nitrogen are "hazardous chemicals" as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and ammonia is an EHS as defined in Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 370.2, and as listed in 40 C.F.R. Part 355, Appendices A and B.

11. Respondent is an "employer" as that term is defined at 29 U.S.C. § 1910.1200(c).

12. Respondent is the owner or operator of a facility that is required to prepare or have available an MSDS for hazardous chemicals under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 et seq., and 29 C.F.R. § 1910.1200.

13. Pursuant to 40 C.F.R. § 370.20(b)(1), the reporting threshold for Ammonia (CAS No. 7664-41-7) is 500 pounds; the reporting threshold for No. 4 Fuel Oil (CAS No. 68476-31-3) is 10,000 pounds, and the reporting threshold for liquid nitrogen (CAS No. 7727-37-9) is 10,000 pounds.

14. Upon information and belief, during calendar year 2007, Respondent had present at its Facility 8,500 pounds of ammonia, 131,370 pounds of No. 4 fuel oil and 80,650 pounds of liquid nitrogen.

15. At any one time during calendar year 2007, Respondent had present at the Facility the hazardous chemicals ammonia, No. 4 fuel oil, and liquid nitrogen in quantities exceeding their respective thresholds.

16. Respondent was required to submit to the SERC either MSDSs for ammonia, No. 4 fuel oil, liquid nitrogen or list of hazardous chemicals identifying ammonia, No. 4 Fuel Oil, and liquid nitrogen as being present at the Facility in quantities exceeding their respective thresholds, no later than 90 days after Respondent had the hazardous chemicals present at the Facility in amounts equal to or greater than their respective threshold.

17. Respondent failed to submit to the SERC no later than 90 days after Respondent had ammonia, No. 4 fuel oil and liquid nitrogen present at the Facility in amounts equal to or greater than their respective thresholds either MSDSs for the hazardous chemicals or a list of hazardous chemicals identifying the hazardous chemicals as present at the Facility in quantities exceeding their respective threshold.

18. Respondent's failure to submit to the SERC either MSDSs for ammonia, No. 4 fuel oil and liquid nitrogen or a list of hazardous chemicals identifying ammonia, No. 4 fuel oil and liquid nitrogen as present at the Facility in quantities exceeding their respective thresholds, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT II - VIOLATION OF SECTION 311 OF EPCRA
LOCAL FIRE DEPARTMENT

19. The allegations set forth in paragraphs 1 through 18 of this Complaint are incorporated by reference herein as though fully set forth at length.

20. The local Fire Department for the Facility is, and has at all times relevant to this Complaint, the Norfolk Fire Department, located at 100 Brooke Avenue #500, Norfolk, Virginia 23510.

21. Respondent was required to submit to the Local Fire Department either an MSDS for ammonia, or list of hazardous chemicals identifying ammonia as being present at the Facility in a quantity exceeding its threshold, no later than 90 days after Respondent had the present at the Facility in an amount equal to or greater than its threshold.

22. Respondent failed to submit to the Local Fire Department no later than 90 days after Respondent had ammonia present at the Facility in amounts equal to or greater than its threshold either an MSDS for ammonia or a list of hazardous chemicals identifying ammonia as present at the Facility in quantity exceeding its threshold.

23. Respondent's failure to submit to the Local Fire Department either an MSDS for ammonia or a list of hazardous chemicals identifying ammonia as present at the Facility in a quantity exceeding its threshold, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT III - VIOLATION OF SECTION 312 OF EPCRA
CALENDAR YEAR 2007 - SERC

24. The allegations contained in Paragraphs 1 through 23 of the Complaint are incorporated by reference herein as though fully set forth at length.

25. Section 312 of EPCRA, 42 U.S.C. § 11022, requires the owner or operator of a facility required to prepare or have available a MSDS for a hazardous chemical in accordance with the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time in a quantity equal to or greater than its applicable minimum threshold for reporting established by 40 C.F.R. § 370.20(b) (the "threshold"), to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical and providing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate SERC, LEPC, and local Fire Department with jurisdiction over the facility.

26. By March 1, 2008, Respondent was required to submit to the SERC, LEPC, and local Fire Department, an Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemicals ammonia, No. 4 fuel oil and liquid nitrogen as present at the Facility during calendar year 2007 in quantities greater than their respective thresholds, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the hazardous chemicals.

27. Respondent did not submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2007 to the SERC, as required by Section 312 of EPCRA, 42 U.S.C. § 11022.

28. Respondent failed to submit to the SERC, by March 1, 2008, an Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemicals ammonia, No. 4 fuel oil and liquid nitrogen as present at the Facility in quantities greater than their respective thresholds at any one time during calendar year 2007 and providing the required information concerning the hazardous chemicals.

29. Respondent's failure to submit to the SERC, by March 1, 2008, an Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemicals ammonia, No. 4 fuel oil and liquid nitrogen as present at the Facility in quantities greater than their respective thresholds at any one time during calendar year 2007 and providing the required information concerning the hazardous chemicals, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT IV - VIOLATION OF SECTION 312 OF EPCRA
CALENDAR YEAR 2007 - LOCAL FIRE DEPARTMENT**

30. The allegations contained in Paragraphs 1 through 29 of the Complaint are incorporated by reference herein as though fully set forth at length.

31. On or about January 24, 2008 Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2007 to the Local Fire Department.

32. Respondent's Emergency and Hazardous Chemical Inventory Form for calendar year 2007 did not identify ammonia as present at the Facility in a quantity equal to or greater than its threshold.

33. Respondent failed to submit to the Local Fire Department, by March 1, 2008, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying ammonia as present at the Facility in a quantity equal to or greater than its threshold at any one time during calendar year 2007 and providing the required information concerning the hazardous chemical.

34. Respondent's failure to submit to the Local Fire Department, by March 1, 2008, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical ammonia as present at the Facility in quantities greater than its threshold at any one time during calendar year 2007 and providing the required information concerning the hazardous chemical, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT V - VIOLATION OF SECTION 312 OF EPCRA -
CALENDAR YEAR 2006**

35. The allegations contained in Paragraphs 1 through 34 of the Complaint are incorporated by reference herein as though fully set forth at length.

36. Upon information and belief, during calendar year 2006, Respondent had present at its Facility 8,500 pounds of ammonia, 131,370 pounds of No. 4 fuel oil and 80,650 pounds of liquid nitrogen.

37. By March 1, 2007, Respondent was required to submit to the SERC, LEPC, and Local Fire Department, an Emergency and Hazardous Chemical Inventory Form identifying ammonia, No. 4 fuel oil and liquid nitrogen as present at the Facility during calendar year 2006 in a quantity greater than its threshold, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the hazardous chemicals.

38. Respondent failed to submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2006 to the SERC.

39. On or about January 25, 2007, Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2006 to the Local Fire Department.

40. Respondent's Emergency and Hazardous Chemical Inventory Form for calendar year 2006 submitted to the Local Fire Department did not identify ammonia as present at the Facility in a quantity equal to or greater than its threshold.

41. Respondent failed to submit to the SERC and the Local Fire Department, by March 1, 2007, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical(s) present at the Facility in quantities greater than their respective threshold at any one time during calendar year 2006, and providing the required information concerning the hazardous chemical(s).

42. Respondent's failure to submit to the SERC and Local Fire Department by March 1, 2006, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying hazardous chemical(s) present at the Facility in quantities greater than

their respective thresholds at any one time during calendar year 2006, and providing the required information concerning the chemical(s), constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT VI - VIOLATION OF SECTION 312 OF EPCRA-
CALENDAR YEAR 2005

43. The allegations contained in Paragraphs 1 through 42 of the Complaint are incorporated by reference herein as though fully set forth at length.

44. Upon information and belief, during calendar year 2005, Respondent had present at its Facility 8,500 pounds of ammonia, 131,370 pounds of No. 4 fuel oil and 80,650 pounds of liquid nitrogen.

45. By March 1, 2006, Respondent was required to submit to the SERC, LEPC, and Local Fire Department, an Emergency and Hazardous Chemical Inventory Form identifying ammonia, No. 4 fuel oil and liquid nitrogen as present at the Facility during calendar year 2005 in quantities greater than their respective threshold, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the chemicals.

46. Respondent failed to submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2005 to the SERC.

47. On or about February 10, 2006, Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2005 to the Local Fire Department.

48. Respondent's Emergency and Hazardous Chemical Inventory Form for calendar year 2006 submitted to the Local Fire Department did not identify ammonia as present at the Facility in a quantity equal to or greater than its threshold.

49. Respondent failed to submit to the SERC and the Local Fire Department, by March 1, 2006, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying hazardous chemicals as present at the Facility in quantities greater than their respective thresholds at any one time during calendar year 2005, and providing the required information concerning the hazardous chemicals.

50. Respondent's failure to submit to the SERC and Local Fire Department by March 1, 2006, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying hazardous chemicals as present at the Facility in a quantity greater than its threshold at any one time during calendar year 2005, and providing the required information concerning the chemicals, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

PROPOSED EPCRA PENALTY

Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that for violations of Section 311 of EPCRA, 42 U.S.C. § 11021, EPA may assess a penalty not to exceed \$10,000.00 per violation. Pursuant to the Debt Collection Improvement Act of 1996 (“DCIA”) and the subsequent Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, (Feb. 13, 2004), codified at 40 C.F.R. Part 19, (collectively referred to as the “Penalty Inflation Rule”), copies of which are enclosed with this Administrative Complaint as Attachment B, violations of Section 311 of EPCRA, 42 U.S.C. § 11021, which occur after January 30, 1997, are subject to a new statutory maximum penalty of \$11,000.00 per violation.

Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), authorizes EPA to assess a penalty not to exceed \$25,000.00 per violation of Section 304 of EPCRA, 42 U.S.C. § 11004. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, EPA may assess a penalty not to exceed \$25,000.00 per violation. Pursuant to the DCIA and the subsequent Penalty Inflation Rule, violations of Section 312 of EPCRA, 42 U.S.C. § 11022, which occur after March 15, 2004, are subject to a statutory maximum penalty of \$32,500.00 per violation. In the case of a second or subsequent violation occurring after March 15, 2004, the amount of such penalty may not be more than \$97,500.00 for each day during which the violation continues.

Civil penalties under Section 325(b) and (c) of EPCRA, 42 U.S.C. § 11045(b) and (c), may be assessed by Administrative Order and are to be assessed and collected in the same manner, and subject to the same provisions, as in the case of penalties assessed and collected after notice and opportunity for hearing on the record in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.

To develop the penalty proposed in this Complaint, Complainant has taken into account the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require, with specific reference to EPA’s *ERP*, dated September 30, 1999, appended as Attachment C. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty authorities described above to particular cases.

On the basis of the violations of EPCRA described above, Complainant has determined that Respondent is subject to penalties for violations of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022. Accordingly, Complainant proposes a civil penalty in the amount of **\$46,398.95** pursuant to the authority of Section 325 of EPCRA, 42 U.S.C. § 11045, as set forth below. This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

Count I: Failure to submit to the SERC no later than 90 days after Respondent had ammonia, No. 4 fuel oil and liquid nitrogen present at the Facility in amounts equal to or greater than their respective thresholds, MSDSs for, or a list of hazardous chemicals identifying the hazardous chemicals, in violation of Section 311 of EPCRA, 42 U.S.C. § 11011, and 40 C.F.R. § 370.21
Extent Level 1, Gravity Level A **\$8,222.05**

Count II: Failure to submit to the Local Fire Department no later than 90 days after Respondent had ammonia present at the Facility in an amount equal to or greater than its thresholds, an MSDS for, or a list of hazardous chemicals identifying, ammonia, in violation of Section 311 of EPCRA, 42 U.S.C. § 11011, and 40 C.F.R. § 370.21
Extent Level 1, Gravity Level A **\$8,225.05**

Base Penalty Calculation:

Nature of Violation - The violations by Respondent alleged in Counts I and II of the Complaint address emergency preparedness and community-right-to-know matters and concerns. Respondent's violations had a deleterious effect upon the reporting system under EPCRA, which is intended and designed to enable federal, state, and local governmental entities to properly plan for chemical releases at and from facilities in their communities, and the public's ability to access information concerning hazardous chemicals and EHSs being stored and/or present in their communities. Respondent's violations, therefore, pose a potential for harm not only to the EPCRA regulatory system, but also to the protection of the environment and human health.

Extent Level - The Extent Level for Respondent's violation as alleged in Count I of the Complaint is Level 1 due to Respondent's failure to submit to the SERC, MSDSs for ammonia, No. 4 fuel oil, and liquid nitrogen or include these hazardous chemicals on a list identifying the hazardous chemicals at the Facility. The Extent Level for Respondent's violation as alleged in Count II of the Complaint is Level 1 due to Respondent's failure to submit to the Local Fire Department, an MSDS for one chemical, ammonia, or include ammonia on a list identifying those hazardous chemicals at the Facility.

Gravity Level - The Gravity Level for Respondent's violations as alleged in Counts I and II of the Complaint is Level A due to the fact that the quantity of ammonia (approximately 8,500 pounds) Respondent had present at the Facility in 2007 was seventeen (17) times its threshold of 500 pounds. As a result, a Gravity Level of A for these Counts incorporates and takes into account the nature and extent of harm posed by Respondent's violations concerning ammonia.

Adjustments - As per the ERP, the penalties for Counts I and II have been adjusted downwards by fifteen percent (15%) to account for the fact that Respondent is a

first-time violator of EPCRA whose business employees 100 or fewer people and whose annual total corporate entity sales are less than \$20 million.

Base Penalty Total: - In light of the adjustments to penalties instituted by DCIA and the Penalty Inflation Rule and the fact that the allegations of Counts I and II of the Complaint address violations which occurred after March 15, 2004, an Extent Level of 1 and Gravity Level of A for the violations as alleged in Count I and II result in a Base Penalty of **\$16,444.10**.

Multi-Day Penalty: In light of the facts of the action at bar, EPA in its enforcement discretion is not seeking imposition of a multi-day penalty against Respondent for the violations alleged in Counts I and II of the Complaint.

Proposed Penalty – Counts I and II: **\$16,444.10**

Count III: Failure to submit to the SERC by March 1, 2008, an Emergency and Hazardous Chemical Inventory Form identifying, and providing information concerning ammonia, No. 4 fuel oil and liquid nitrogen present at the Facility in calendar year 2007, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25
Extent Level 1, Gravity Level A **\$20,553.00**

Count IV: Failure to submit to the local Fire Department by March 1, 2008, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying, and providing information concerning ammonia present at the Facility in calendar year 2005, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25
Extent Level 1, Gravity Level C **\$6,851.85**

Base Penalty Calculation:

Nature of Violation - The violations alleged in Counts III and IV of the Complaint address emergency preparedness and community right-to-know matters and concerns. The violations had a deleterious effect upon the reporting system under EPCRA, which is intended and designed to enable federal, state, and local governmental entities to properly plan for chemical releases at and from facilities in their communities, and the public's ability to access information concerning hazardous chemicals and EHSs that are stored or otherwise present in their communities. The violations, therefore, pose a potential for harm not only to the EPCRA regulatory system, but also to the protection of the environment and human health.

Extent Level –The Extent Level for the violation as alleged in Count III of the Complaint is Level 1 due to Respondent's failure to submit to the SERC any

Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemicals present at the Facility in calendar year 2007. The Extent Level for the violation as alleged in Count IV of the Complaint is Level 1 due to Respondent's failure to submit to the Local Fire Department a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical ammonia present at the Facility in calendar year 2007.

Gravity Level - The Gravity Level for Respondent's violations as alleged in Count III of the Complaint is Level A due to the fact Respondent did not submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2007 to the SERC and the amount of ammonia present at the Facility was greater than ten times the reporting threshold. The Gravity Level for Respondent's violations as alleged in Count IV is Level C due to the fact that Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2007 to the Local Fire Department, but one hazardous chemical, ammonia, was missing from the report.

Adjustments - As per the ERP, the penalties for Counts III and IV have been adjusted downwards by fifteen percent (15%) to account for the fact that Respondent is a first-time violator of EPCRA whose business employees 100 or fewer people and whose annual total corporate entity sales are less than \$20 million.

Base Proposed Penalty Total - In light of the adjustments to penalties instituted by DCIA and the Penalty Inflation Rule, and the fact that the violation as alleged in Counts III through IV of the Complaint occurred after March 15, 2004, an Extent Level of 1 and Gravity Level of A for the violations as alleged in Count III, and an Extent Level of 1 and Gravity Level of C for the violations as alleged in Count IV of the Complaint results in a Base Penalty of **\$27,404.85**.

Multi-Day Penalty: In light of the facts of the action at bar, EPA in its enforcement discretion is not seeking imposition of a multi-day penalty against Respondent for the violations alleged in Counts III through IV of the Complaint.

Proposed Penalty – Counts III – IV: **\$27,404.85**

<u>Count V:</u>	Failure to submit to the SERC and Local Fire Department by March 1, 2007 an Emergency and Hazardous Chemical Inventory Form identifying, and providing information concerning all hazardous chemicals present at the Facility in calendar year 2006, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25	
	Past Year	\$ 1,275.00

<u>Count VI:</u>	Failure to submit to the SERC and Local Fire Department by March 1, 2006 an Emergency and Hazardous Chemical Inventory
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Form identifying, and providing information concerning all hazardous chemicals present at the Facility in calendar year 2005, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25

Past Year

\$ 1,275.00

Pursuant to Section VI (Past Year Violations of Section 312 of EPCRA) of the September 30, 1999 ERP, Complainant seeks imposition of a flat penalty of \$1,275.00 for the violations of Section 312 of EPCRA concerning the hazardous chemicals present at the Facility in calendar years 2006 and calendar year 2005 and for which Respondent failed to submit complete and accurate Emergency and Hazardous Chemical Inventory Forms to the SERC and Local Fire Department by March 1, 2007, and March 1, 2006, respectively. As per the ERP, the penalties for Counts III and IV have been adjusted downwards from the flat fee of \$1,500.00 by fifteen percent (15%) to account for the fact that Respondent is a first-time violator of EPCRA whose business employees 100 or fewer people and whose annual total corporate entity sales are less than \$20 million.

Proposed Penalty - Counts XII and XIII: \$2,550.00.

TOTAL PROPOSED EPCRA PENALTIES:

\$46,398.95

EPA will consider, among other factors, Respondent's ability to pay to adjust the proposed civil penalty assessed in this Administrative Complaint. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of this Administrative Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in this Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent may request, within thirty (30) days of receipt of this Complaint, a hearing before an EPA Administrative Law Judge on the Complaint and at the hearing may contest any material fact and the appropriateness of any penalty amount. To request a hearing, Respondent must file a written Answer within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer should also contain: the circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which Respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing.

Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of that allegation.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and waiver of the right to a hearing. Failure to file an Answer shall result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondent shall be conducted in accordance with the Consolidated Rules, 40 C.F.R. Part 22, a copy of which is provided as Attachment A. Respondent must send any request for a hearing to:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to Cynthia T. Weiss, the attorney assigned to represent EPA in this matter, at:

Cynthia T. Weiss (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2659

Respondent's rights to appeal an Order assessing an EPCRA penalty are set forth in 40 C.F.R. § 22.30 and in Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1), which provides in relevant part that:

Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator.

QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's prehearing exchange. If Respondent pays the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to Cynthia T. Weiss (3RC42), Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations and to appeal the final order.

Payment of the EPCRA penalty shall be made by sending a cashier's check made payable to the "United States Treasury." If the payment of the EPRCA penalty is sent via regular or US Postal Service express mail, the payment should be mailed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If the payment of the EPCRA penalty is sent via FedEx or other non-US Postal Service express mail, the payment should be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

Payment may be made by wire transfer/EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727

SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

Payment may be made via Automated Clearing House (ACH) Transfers for receiving U.S. currency (also known as REX or remittance express) to:

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, DC 20074
Contact for ACH: Jessie White 301 887-6548

The check(s) should reference the name and docket number of this Administrative Complaint. Copies of the check(s) shall be mailed at the same time payment is made to Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Cynthia T. Weiss, Assistant Regional Counsel (3RC42), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please write to or telephone:

Cynthia T. Weiss (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2659

Please note that a request for, the scheduling of, or the participation in, an informal settlement conference **does not** extend the thirty (30) day period during which a written Answer and Request for Hearing must be submitted as set forth above. The informal settlement conference procedure, however, may be pursued simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties against whom a civil penalty is proposed to pursue settlement through an informal conference. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties and incorporated into a Final Order signed by the Regional Administrator or his designee. SETTLEMENT CONFERENCES SHALL NOT AFFECT THE REQUIREMENT TO FILE A TIMELY ANSWER TO THE COMPLAINT.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: The Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, shall have any ex parte communication with the EPA trial staff or the Respondent on the merits of any issues involved in this proceeding. Please be advised that the Consolidated Rules prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer, after issuance of a Complaint.

ATTACHMENTS

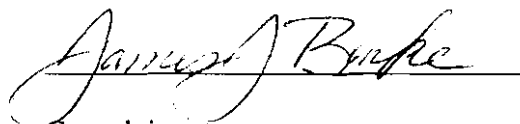
- A. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22
- B. Debt Collection Improvement Act of 1996 ("DCIA") and subsequent Civil Monetary Penalty Inflation Adjustment Rule, 69 *Federal Register* 7121 (February 13, 2004), codified at 40 C.F.R. Part 19 ("Penalty Inflation Rule")
- C. *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 ("ERP").
- D. Detailed Summary of Proposed Penalties

GENERAL PROVISIONS

Issuance of this Complaint shall not constitute or be construed as a waiver by EPA of its rights against Respondent, including but not limited to the right to expend and recover funds under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, ("CERCLA"), to bring enforcement actions under Section 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6973, to address releases including those identified in this Complaint and to require further action as necessary to respond to the releases addressed in this Complaint.

7/23/08

DATE



Complainant
James J. Burke, Director
Hazardous Site Cleanup Division

ATTACHMENT A

40 C.F.R. Part 22: Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUL 23 11:36

In the Matter of:	)	EPA Docket No. EPCRA-03-2008-0379
J. H. Miles and Company, Inc.)	
902 Southhampton Avenue)	
Norfolk, Virginia 23510,)	
)	
Respondent,)	
)	
J. H. Miles and Company, Inc.	)	Administrative Complaint and Notice
902 Southhampton Avenue	)	of Opportunity for Hearing filed
Norfolk, Virginia 23510,	)	under Sections 311, 312 and 325 of the
	)	Emergency Planning and Community
	)	Right-to-Know Act, 42 U.S.C.
Facility.	)	§§ 11021, 11022 and 11045.
)	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant's, the United States Environmental Protection Agency's, Administrative Complaint and Notice of Opportunity for a Hearing, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Administrative Complaint and Notice of Opportunity for a Hearing, along with its enclosures and/or attachments, were sent by certified mail, return receipt requested, to:

John R. Miles, CEO
J. H. Miles and Company, Inc.
902 Southhampton Avenue
Norfolk, Virginia 23501

7/23/08
Date

Cynthia T. Weiss
Cynthia T. Weiss (3RC42)
Assistant Regional Counsel
Counsel for Complainant
(215) 814-2659