



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 6, 2011

REPLY TO THE ATTENTION OF
E-19J

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In The Matter of: *Rowell Chemical Corporation*
Docket No.: TSCA-05-2011-0011
Complaint Date: June 20, 2011
Total Proposed Penalty: \$10,961.00

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answer to an Administrative Complaint for *Rowell Chemical Corporation* in Hinsdale, Illinois.

Please assign an Administrative Law Judge for this case. If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in blue ink that reads "La Dawn Whitehead".

La Dawn Whitehead
Regional Hearing Clerk

Enclosure

cc: Mark R. Sargis, Esquire
Bellande & Sargis Law Group, LLP
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Chicago, Illinois 60606
(312) 853-8701

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Chicago, Illinois 60604-3590
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) Docket No. TSCA-05-2011-0011
)
Rowell Chemical Corporation) Proceeding to Assess a Civil Penalty
Hinsdale, Illinois) Under Section 16(a) of the Toxics Substances
) Control Act, 15 U.S.C. § 2615(a)
)
Respondent.)
_____)

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RESPONDENT'S ANSWER TO COMPLAINT

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

NOW COMES Respondent, ROWELL CHEMICAL CORPORATION ("Rowell" or "Respondent"), by and through its attorneys, Bellande & Sargis Law Group, LLP, answer the Complaint in this action as follows:

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).

ANSWER: Admitted

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

ANSWER: Admitted

3. Respondent is Rowell Chemical Corporation (Rowell), a corporation doing business in the State of Illinois.

ANSWER: Admitted

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

16. 40 § 71053C.F.R. 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").

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

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

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself.

20. During calendar year 2005, Respondent owned or controlled a site at 10100 South Archer Road, Willow Springs, Illinois 60480, hereafter referred to as the "Willow Springs facility."

ANSWER: Admitted

21. At the Willow Springs facility, Respondent manufactured 4,404,717 pounds of the chemical substance Sodium Hypochlorite (CAS Number 7681-52-9) during calendar year 2005.

ANSWER: Admitted, except that Respondent states that it manufactured 4,404,717 pounds of Sodium Hypochlorite subject to reporting under the Toxic Substances Control Act (TSCA). Respondent avers that Sodium Hypochlorite is used for many different purposes and, depending on the intended use of the product, is therefore subject to different EPA regulatory reporting requirements. Respondent further avers that: during 2005 it manufactured substantial additional quantities of Sodium Hypochlorite subject to reporting under the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA); that its regulatory staff properly made determinations of which quantities of Sodium Hypochlorite for which customers were subject to reporting under FIFRA; that quantities of Sodium Hypochlorite reported under FIFRA would not have been reportable under TSCA in 2005; and that, upon information and belief, many other regulated companies and some trade associations did not even make any distinction between manufacture of Sodium Hypochlorite reportable under the new TSCA reporting requirements and FIFRA requirements.

22. At all times relevant to this Complaint, the chemical substance Sodium Hypochlorite was listed on the Master Inventory File.

ANSWER: Admitted

23. Respondent is not exempt from the reporting requirements of 40 C.F.R. Part 710 for its manufacture for commercial purposes of the quantity of Sodium Hypochlorite listed in paragraph 21 above by any provision of 40 C.F.R. § 710.49.

ANSWER: Admitted

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

ANSWER: Admitted

25. On or about January 25, 2010, 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.

ANSWER: Admitted; however, Respondent further avers that it initially attempted to submit Form U electronically via EPA's CDX on July 16, 2009, immediately after Respondent became aware of its responsibility to file Form U; that CDX was no longer available for accepting Form U submittals at that time; and that Respondent thereafter submitted Form U to EPA with its voluntary disclosure to EPA by letter dated July 27, 2009.

26. On or about July 29, 2009, Respondent voluntarily disclosed the violation alleged in this Complaint by letter to Complainant.

ANSWER: Admitted, except that Respondent made the disclosure on July 27, 2009; see Answer to paragraph 25.

COUNT 1

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

ANSWER: Respondent incorporates by reference its answers contained in paragraphs 1 through 26.

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

ANSWER: Admitted.

29. On or about January 25, 2010, 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.

ANSWER: Admitted, except see Answer to paragraph 25 regarding Respondent's earlier attempt and submission.

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

ANSWER: Admitted

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).

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself

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 I

Failure to submit an Inventory Update Report	\$21,922
Total Proposed Civil Penalty	\$21,922

ANSWER: Respondent admits Complainant has proposed a civil penalty, as indicated in its allegation.

33. In accordance with the *Enforcement Response Policy for Reporting and Recordkeeping Requirements for TSCA Sections 8, 12, and 13*, dated June 1, 1999, (Response Policy) Complainant is reducing the proposed civil penalty by 50 percent because of Respondent's voluntary disclosure of the alleged violations.

Adjusted Total Proposed Civil Penalty	\$10,961
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ANSWER: Respondent admits Complainant has proposed an adjusted civil penalty, as indicated in its allegation. Respondent avers that Respondent further avers that, as part of its voluntary disclosure, Respondent qualified for mitigation under EPA's policy, "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy), but that EPA disagreed with Respondent's eligibility primarily because of Respondent's inability to file Form U at the proper address after finding that EPA's CDX would no longer allow electronic filing of Form U.

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.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced statute or regulation speaks for itself

35. EPA calculates penalties by applying its Response Policy. The Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. A copy of the Response Policy is included with this Complaint.

ANSWER: Respondent makes no answer to this paragraph because the allegations constitute a legal conclusion to which no answer is required. To the extent that any answer is required, Respondent states that the referenced policy speaks for itself. See also Answer to paragraph 33.

36. The proposed penalty amount is based on the information available to Complainant prior to the filing of this Complaint. If new information becomes available relevant to the proposed penalty amount, Complainant will consider it and may adjust the proposed penalty amount as appropriate.

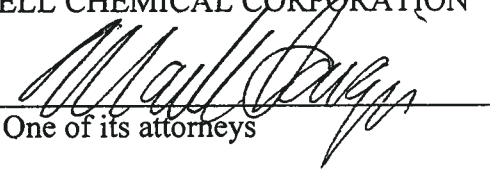
ANSWER: Respondent makes no answer to this paragraph because the allegations are not directed to Respondent.

Dated: September 2, 2011

Respectfully submitted,

Respondent,
ROWELL CHEMICAL CORPORATION

By:


One of its attorneys

Mark R. Sargis (ARDC #6193673)
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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In the Matter of:) Docket No. TSCA-05-2011-0011
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) Control Act, 15 U.S.C. § 2615(a)
)
Respondent.)
_____)


CERTIFICATE OF SERVICE

TO:

Andre Daugavietis (C-14J)
Associate Regional Counsel
US EPA, Region 5
77 West Jackson Blvd
Chicago, IL 60604

Marcy A. Toney (C14-J)
Regional Judicial Council
US EPA, Region 5
77 West Jackson Blvd
Chicago, IL 60604

I, MARK R. SARGIS, an attorney, certify that on September 2, 2011, I caused a copy of this Certificate of Service and **Respondent's Answer to Complaint** to be served on the above by placing the same in the U.S. Mail slot located at 200 W. Madison, Chicago, Illinois 60606, with proper postage prepaid.



Mark R. Sargis, Esq.

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