

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 EPA Region III. The Respondent is Superior Tube Company, Inc. (“Respondent” or “Superior Tube”). Respondent is hereby notified of EPA’s determination that Respondent has violated the requirements and prohibitions of Section 109 of the CERCLA, 42 U.S.C. § 9609, and Section 304 of EPCRA, 42 U.S.C. §11004, and their respective implementing regulations, 40 C.F.R. Parts 302 and 355.

PRELIMINARY STATEMENT

The implementing regulations for the emergency notification requirements in Section 304 of EPCRA, 42 U.S.C. § 11004, are codified at 40 C.F.R. Part 355. On November 3, 2008, EPA issued a final rule, 73 Fed. Reg. 65451 (Nov. 3, 2008), *inter alia*, to make these regulations easier to read by presenting them in a plain language format. The amendments resulted in a re-numbering of 40 C.F.R. Part 355, which became effective on December 3, 2008. This Complaint references the newly effective numbering, but includes the pre-2008 numbering in parentheses since those regulations were in effect at the time of the violations alleged herein. In support of its Complaint, Complainant alleges the following:

BACKGROUND

1. Respondent is a Pennsylvania corporation with its principal place of business located at 3900 Germantown Pike, Collegeville, Pennsylvania, 19426.
2. As a corporation, Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. §11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61 (355.20).
3. Upon information and belief, beginning in approximately 1934, continuing through the date of filing of this Complaint, and at all times relevant to this Complaint, Respondent has been in charge of, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the Superior Tube facility located at 3900 Germantown Pike in Collegeville, Pennsylvania.
4. Upon information and belief, beginning in approximately 1934, continuing through the date of the filing of this Complaint, and at all times relevant to this Complaint, Respondent has owned and/or operated, within the meaning of Section 304 of EPCRA, 42 U.S.C. §11004, the Superior Tube facility located at 3900 Germantown Pike in Collegeville, Pennsylvania.
5. The Superior Tube facility (the “Facility”) is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. §11049(4), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61 (355.20).

6. On July 15, 2008, EPA conducted an EPCRA Sections 302-312 inspection of the Facility.

7. Section 102(a) of CERCLA, 42 U.S.C. §9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. §9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. Part 302, Table 302.4.

COUNT I - VIOLATION OF SECTION 103 OF CERCLA

8. The allegations contained in paragraphs 1 through 7 of this Complaint are incorporated by reference herein as though fully set forth at length.

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, that a person in charge of a facility, as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to, or greater than, the RQ, immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, 33 U.S.C. § 1321(d)(2)(E), of such release.

10. Upon information and belief, beginning on or about July 10, 2007, at or about 5:00 p.m. (1700 hours), an estimated two thousand four hundred and forty (2,440) pounds of trichloroethylene, Chemical Abstracts Service ("CAS") Registry No. 79-01-6, were released from the Facility (the "Release").

11. Trichloroethylene is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, with an RQ of one hundred (100) pounds, as listed in 40 C.F.R. Part 302, Table 302.4.

12. The July 10, 2007 Release of trichloroethylene from the Facility constitutes a release, as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and 40 C.F.R. § 302.3, of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

13. The July 10, 2007 Release of trichloroethylene was not a "federally permitted release" as that term is defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10), and used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

14. Upon information and belief, Respondent had knowledge of the July 10, 2007 Release of trichloroethylene from the Facility, in an amount equal to or in excess of its applicable RQ, at or about 5:15 p.m. (1715 hours) on July 10, 2007.

15. Respondent allegedly notified the NRC of the July 10, 2007 Release of trichloroethylene at approximately 5:32 p.m. (1732 hours) on July 11, 2007, twenty-four (24) hours and seventeen (17) minutes after the Respondent had knowledge that a release of a hazardous substance had occurred at the Facility in an amount equal to, or in excess of, the applicable RQ.

16. Respondent failed to immediately notify the NRC of the July 10, 2007 Release of trichloroethylene as soon as the Respondent had knowledge of the Release of trichloroethylene, as required by Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

17. Respondent's failure to immediately notify the NRC of the July 10, 2007 Release of trichloroethylene is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

COUNT II - VIOLATION OF SECTION 304(b) OF EPCRA - SERC

18. The allegations contained in paragraphs 1 through 17 of this Complaint are incorporated by reference herein as though fully set forth at length.

19. Section 304(a) and (b) of EPCRA, 42 U.S.C. §11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires the owner or operator of a facility at which hazardous chemicals are produced, used or stored to immediately notify the State Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") when there has been a release of a hazardous substance or an extremely hazardous substance ("EHS") in a quantity equal to, or greater than, the RQ for that hazardous substance or EHS. The list of RQs for hazardous substances is codified at 40 C.F.R. Part 302, Table 302.4. The RQ for an EHS is the quantity determined by EPA regulation as requiring notice and as published in 40 C.F.R. Part 355, Appendices A and B, the release of which shall be required to be reported under Section 304(b) of EPCRA.

20. The SERC for the Facility is, and has been at all times relevant to this Complaint, the Pennsylvania Emergency Management Agency, located at 2605 Interstate Drive in Harrisburg, Pennsylvania 17110.

21. The LEPC for the Facility is, and has been at all times relevant to this Complaint, the Montgomery County LEPC, located at 50 Eagleville Road in Eagleville, Pennsylvania 19403.

22. The July 10, 2007 Release of trichloroethylene from the Facility constitutes a release of a hazardous substance in a quantity equal to or greater than its RQ, requiring immediate notification of the SERC and the LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. §11004(a) and (b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

23. Respondent notified the Pennsylvania Emergency Management Agency of the July 10, 2007 Release of trichloroethylene at 5:38 p.m. on July 11, 2007, twenty-four (24) hours and twenty-three (23) minutes after Respondent knew that a release of trichloroethylene had occurred at the Facility in an amount equal to or in excess of the applicable RQ.

24. Respondent did not immediately notify the Pennsylvania Emergency Management Agency of the occurrence of the July 10, 2007 Release of trichloroethylene as soon as the Respondent had knowledge of the July 10, 2007 Release of trichloroethylene, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. §11004(a) and (b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

25. Respondent's failure to immediately notify the Pennsylvania Emergency Management Agency of the July 10, 2007 Release of trichloroethylene is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. §11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. §11045.

26. On December 28, 2006, EPA and Superior Tube entered into a Consent Agreement and Final Order, Docket No. EPCRA-03-02006-0147, resolving EPA's claims that Superior Tube violated, among other things, Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), by failing to report immediately an April 4, 2005 release of trichloroethylene in excess of the reportable quantity from the Facility to the appropriate agency.

27. Respondent's failure to immediately notify the appropriate agency of the July 10, 2007 Release of trichloroethylene is, therefore, a second and subsequent violation of Section 304(a) and (b), 42 U.S.C. § 11004(a) and (b), pursuant to Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2).

COUNT III - VIOLATION OF SECTION 304(b) OF EPCRA-LEPC

28. The allegations contained in paragraphs 1 through 27 of this Complaint are incorporated by reference herein as though fully set forth at length.

29. Respondent notified the Montgomery County LEPC of the July 10, 2007 Release of trichloroethylene at 5:45 p.m. on July 11, 2007, twenty-four (24) hours and thirty (30) minutes after Respondent knew that a release of trichloroethylene had occurred at the Facility in an amount equal to or in excess of the applicable RQ.

30. Respondent did not immediately notify the Montgomery County LEPC of the occurrence of the July 10, 2007 Release of trichloroethylene as soon as the Respondent had knowledge of the July 10, 2007 Release of trichloroethylene, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. §11004(a) and (b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

31. Respondent's failure to immediately notify the Montgomery County LEPC of the July 10, 2007 Release of trichloroethylene is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. §11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. §11045.

32. Respondent's failure to immediately notify the appropriate agency of the July 10, 2007 Release of trichloroethylene is, therefore, a second and subsequent violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), pursuant to Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2).

PROPOSED CERCLA AND EPCRA PENALTIES

To develop the proposed penalty in this Complaint, Complainant has taken into account the nature, circumstances, extent, and gravity of the violation or 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 *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* ("ERP"), dated September 30, 1999, a copy of which is enclosed with this Complaint as Attachment B. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty authorities described above to particular cases.

PROPOSED CERCLA PENALTY

Section 109(a)(1) of CERCLA, 42 U.S.C. § 9609(a), authorizes EPA to assess a penalty not to exceed \$25,000.00 per violation of the notice requirements of Section 103 of CERCLA, 42 U.S.C. § 9603. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA") and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360 (December 31, 1996), codified at 40 C.F.R. Part 19 ("Penalty Inflation Rule"), copies of which are enclosed with this Complaint as Attachment C, violations of Section 103 of CERCLA which occur after March 15, 2004 but before January 12, 2009, are subject to a statutory maximum penalty of \$32,500.00 per violation.

Civil penalties under Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), 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.

On the basis of the violation of CERCLA described above, Complainant has determined that Respondent is subject to penalties for violations under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Accordingly, Complainant proposes a civil penalty in the amount of

\$28,340.00 pursuant to the authority of Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), as set forth below. This proposed penalty 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 immediately notify the NRC following the July 10, 2007 Release of trichlorethylene in a quantity equal to, or greater than, the RQ, in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6
Extent Level 1, Gravity Level A **\$28,340.00**

Base Penalty Calculation

Nature of Violation: The violation by Respondent alleged in Count I of the Complaint addresses emergency response matters and concerns. Respondent’s violation had a deleterious effect upon the reporting system under CERCLA which is intended and designed to enable federal, state, and local governmental entities to be able to properly respond to chemical releases at and from facilities in their communities. Respondent’s violation, therefore, poses not only a potential for harm to the CERCLA regulatory system, but also 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 because Respondent failed to notify the NRC of the July 10, 2007 Release of trichlorethylene for more than two (2) hours.

Gravity Level: The Gravity Level for Respondent’s violation as alleged in Count I of the Complaint is Level A because the amount of trichlorethylene (approximately two thousand four hundred and forty (2,440) pounds) released to the environment at the Facility was greater than ten (10) times its RQ of ten (100) pounds. As a result, a Gravity Level of A for this Count incorporates and takes into account the nature and extent of harm posed by Respondent’s violation.

Base Penalty Total: In light of the adjustments to penalties instituted by DCIA and the Penalty Inflation Rule and the fact that the allegation of Count I of the Complaint addresses a violation by Respondent which occurred after March 15, 2004, but before January 12, 2009, an Extent Level of 1 and a Gravity Level of A for Respondent’s violation as alleged in Count I of the Complaint results in a Base Penalty of \$28,340.00.

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 violation alleged in Count I of the Complaint.

Proposed Penalty for Count I:

\$28,340.00

TOTAL PROPOSED CERCLA PENALTY:

\$28,340.00

PROPOSED EPCRA PENALTY

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. In the case of a second or subsequent violation, Section 325(b) of EPCRA, 42 U.S.C. §11045(b), authorizes EPA to assess a penalty not to exceed \$75,000.00 (three times the normal penalty amount) per violation of Section 304 of EPCRA, 42 U.S.C. §11004. Pursuant to the DCIA and the subsequent Penalty Inflation Rule, 61 Fed. Reg. 69360 (December 31, 1996), codified at 40 C.F.R. Part 19 (“Penalty Inflation Rule”), violations of Section 304 of EPCRA, 42 U.S.C. §11004, which occur after March 15, 2004 but before January 12, 2009, are subject to a statutory maximum penalty of \$32,500.00 per violation for each day during which a violation occurs. In the case of a second or subsequent violation, 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) of EPCRA, 42 U.S.C. §11045(b), 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.

On the basis of the violations of EPCRA described above, Complainant has determined that Respondent is subject to penalties for violations of Section 304 of EPCRA, 42 U.S.C. §11004. Accordingly, Complainant proposes a civil penalty in the amount of **\$113,360.00** pursuant to the authority of Section 325(b) of EPCRA, 42 U.S.C. §11045(b), as set forth below. This proposed penalty does not constitute a “demand” as that term is defined in the Equal Access To Justice Act, 28 U.S.C. §2412.

Count II:

Failure to immediately notify the SERC following the July 10, 2007 Release of trichloroethylene in a quantity exceeding the RQ, in violation of Section 304(b) of EPCRA, 42 U.S.C. §11004(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

Extent Level 1, Gravity Level A

\$28,340.00

Base Penalty Calculation

Nature of Violation: The violation by Respondent alleged in Count II of the Complaint addresses emergency response matters and concerns. Respondent’s violation had a

deleterious effect upon the reporting system under EPCRA which is intended and designed to enable federal, state, and local governmental entities to be able to properly respond to chemical releases at and from facilities in their communities and in surrounding communities. Respondent's violation, therefore, poses not only a potential for harm to the EPCRA regulatory system, but also the protection of the environment and human health.

Extent Level: The Extent Level for Respondent's violation as alleged in Count II of the Complaint is Level 1 because Respondent failed to notify the Pennsylvania Emergency Management Agency regarding the July 10, 2007 trichloroethylene Release for more than two (2) hours.

Gravity Level: The Gravity Level for Respondent's violation as alleged in Count II of the Complaint is Level A because the quantity of trichloroethylene (approximately two thousand four hundred and forty (2,440) pounds) released from the Facility was greater than ten (10) times its RQ of one hundred (100) pounds. As a result, a Gravity Level of A for this Count incorporates and takes into account the nature and extent of harm posed by Respondent's violations concerning the July 10, 2007 trichloroethylene Release.

Base Penalty Total: In light of the adjustments to penalties instituted by DCIA and the Penalty Inflation Rule and the fact that the allegation of Count II of the Complaint addresses a violation by Respondent which occurred after March 15, 2004 but before January 12, 2009, an Extent Level of 1 and Gravity Level of A for Respondent's violation as alleged in Count II of the Complaint results in a Base Penalty of \$28,340.00.

Prior History of Violations: The base penalty amount of \$28,340.00 for Count II has been adjusted upward to reflect Superior Tube's prior history of violations related to the April 4, 2005 release of trichloroethylene. The penalty amount has been increased by two times the base penalty amount to \$56,680.00.

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 Count II of the Complaint.

Proposed Penalty - Count II: **\$56,680.00**

Count III: Failure to immediately notify the LEPC following the July 10, 2007 Release of trichloroethylene in a quantity exceeding the RQ, in violation of Section 304(b) of EPCRA, 42 U.S.C. §11004(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

Extent Level 1, Gravity Level A **\$28,340.00**

Base Penalty Calculation

Nature of Violation: The violation by Respondent alleged in Count III of the Complaint addresses emergency response matters and concerns. Respondent's violation had a deleterious effect upon the reporting system under EPCRA which is intended and designed to enable federal, state, and local governmental entities to be able to properly respond to chemical releases at and from facilities in their communities and in surrounding communities. Respondent's violation, therefore, poses not only a potential for harm to the EPCRA regulatory system, but also the protection of the environment and human health.

Extent Level: The Extent Level for Respondent's violation as alleged in Count III of the Complaint is Level 1 because Respondent failed to notify the Montgomery County LEPC regarding the July 10, 2007 trichloroethylene Release for more than two (2) hours.

Gravity Level: The Gravity Level for Respondent's violation as alleged in Count III of the Complaint is Level A because the quantity of trichloroethylene (approximately two thousand four hundred and forty (2,440) pounds) released from the Facility was greater than ten (10) times its RQ of one hundred (100) pounds. As a result, a Gravity Level of A for this Count incorporates and takes into account the nature and extent of harm posed by Respondent's violations concerning the July 10, 2007 trichloroethylene Release.

Base Penalty Total: In light of the adjustments to penalties instituted by DCIA and the Penalty Inflation Rule and the fact that the allegation of Count III of the Complaint addresses a violation by Respondent which occurred after March 15, 2004 but before January 12, 2009, an Extent Level of I and Gravity Level of A for Respondent's violation as alleged in Count I of the Complaint results in a Base Penalty of \$28,340.00.

Prior History of Violations: The base penalty amount of \$28,340.00 for Count III has been adjusted upward to reflect Superior Tube's prior history of violations related to the April 4, 2005 release of trichloroethylene. The penalty amount has been increased by two times the base penalty amount to \$56,680.00.

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 Count III of the Complaint.

Proposed Penalty - Count III: **\$56,680.00**

TOTAL PROPOSED EPCRA PENALTY: **\$113,360.00**

TOTAL PROPOSED CERCLA AND EPCRA PENALTY: **\$141,700.00**

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 Administrative Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in this Administrative 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 Jefferie E. Garcia, the attorney assigned to represent EPA in this matter, at:

Jefferie E. Garcia (3RC42)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2697

Respondent's right to appeal an Order assessing an EPCRA penalty is set forth in 40 C.F.R. §22.30 and in Section 325(f)(1) of EPCRA, 42 U.S.C. §11045(f)(1). Respondent's right to appeal an Order assessing a CERCLA penalty is set forth in 40 C.F.R. § 22.39 and in Section 109(a)(4) of CERCLA, 42 U.S.C. §9609(a)(4).

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 Jefferie E. Garcia (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 "Treasurer of the United States of America", in care of:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251-6515

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: Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Jefferie E. Garcia, Assistant Regional Counsel, 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 in order to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please contact:

Jefferie E. Garcia (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2697

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.

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. 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 ("ERP") (September 30, 1999)
- C. Debt Collection Improvement Act of 1996 ("DCIA") and subsequent Civil Monetary Penalty Inflation Adjustment Rule. 61 Fed. Reg. 69360 (December 31, 1996). 40 C.F.R. Part 19 ("Penalty Inflation Rule")
- D. Detailed Summary of CERCLA and EPCRA 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 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 ("RCRA"), as amended, 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.

9/30/10
Date


Complainant
Ronald J. Borsellino, Director
Hazardous Site Cleanup Division

In the Matter of: Superior Tube Company, Inc.

EPA Docket No: CERCLA 03-2010-0373

EPA Docket No: EPCRA 03-2010-0373

In the Matter of:

) **EPA Docket No.: CERCLA-03-2010-0373**

) **EPA Docket No.: EPCRA-03-2010-0373**

)

**Superior Tube Company, Inc.
3900 Germantown Pike
Collegeville, Pennsylvania
19426**

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Respondent.

)

) **Administrative Complaint and Notice**

) **of Opportunity for a Hearing filed**

) **under Sections 103 and 109 of the**

) **Comprehensive Environmental**

) **Response, Compensation, and**

) **Liability Act, as amended,**

) **42 U.S.C. §§ 9603 and**

) **9609, and Sections 304 and 325**

) **of the Emergency Planning and**

) **Community Right-to-Know Act,**

) **42 U.S.C. §§11004 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:

Mr. Anthony Jost
Chief Executive Officer
3900 Germantown Pike
Collegeville, PA 19426-3112

9/30/10
DATE



Jefferie E. Garcia
Assistant Regional Counsel
Counsel for Complainant
(215) 814-2697