



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

HAND DELIVERED

December 16, 2010

Ms. Wanda Santiago  
Regional Hearing Clerk (ORA18-1)  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

RE: In the Matter of Lamb & Ritchie Company, Inc.; Docket No. EPCRA-01-2011-0008

Dear Ms. Santiago:

Enclosed for filing in the above referenced matter are an original and one copy of the Administrative Complaint and Notice of Opportunity for Hearing and a certificate of service.

Please contact me at 617-918-1438 with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Sarah Meeks".

Sarah Meeks  
Enforcement Counsel

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
BEFORE THE ADMINISTRATOR**

In the Matter of:	)	
	)	Docket No. EPCRA-01-2011-0008
	)	
Lamb & Ritchie Company, Inc.	)	
90 Broadway	)	
Saugus, MA 01906	)	<b>CIVIL COMPLAINT</b>
	)	<b>and NOTICE OF OPPORTUNITY</b>
Respondent.	)	<b>FOR HEARING</b>
	)	
	)	

**STATUTORY AND REGULATORY BASIS**

This is a civil administrative action issued under the authority of Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter “EPCRA”), and 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, 40 C.F.R. Part 22 (“Part 22”). The Complaint is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“Complainant”). This Complaint alleges that Lamb & Ritchie Company, Inc. (“Respondent”) failed to submit timely, complete, and correct Toxic Chemical Release Inventory Reporting Forms, as required by Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations that set out in greater detail the Section 313 reporting requirement, 40 C.F.R. Part 372.

Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, the United States Environmental Protection Agency (“EPA”) promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372.

Section 313(a) of EPCRA, 42 U.S.C. §11023(a), and 40 C.F.R. § 372.22, require owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. §11023(f). Each Form R is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located.

Section 313(b) of EPCRA, 42 U.S.C. §11023(b), and 40 C.F.R. § 372.22 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification ("SIC") code or a North American Industry Classification System ("NAICS") code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. §372.65 in a quantity exceeding the established threshold during a calendar year are required to submit a Form R for each of these substances for that year.

Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) and EPA's Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, provides that any person who violates any requirement of Section 313 after March 15, 2004 and on or before January 12, 2009 shall be liable to the United States for a civil penalty not to exceed \$32,500 per day for each such violation, and any person who violates any requirement of Section 313 after January 12, 2009 shall be liable to the United States for a civil penalty not to exceed \$37,500 per day for each such violation.

## FACTUAL AND GENERAL ALLEGATIONS

1. Respondent, Lamb & Ritchie Company, Inc., is a corporation incorporated under the laws of the Commonwealth of Massachusetts with a usual place of business at 90 Broadway, Saugus, Massachusetts.
2. Respondent owns and operates a facility that manufactures metal roofing and drainage equipment (“the facility”), located at the address set forth in Paragraph 1.
3. On or about July 9, 2010, an authorized employee of EPA inspected Respondent's facility. The purpose of the inspection was to determine Respondent's compliance with EPCRA Section 313 reporting requirements.
4. Respondent is a “person,” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
5. Respondent is an owner or operator of a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
6. The facility has 10 or more “full-time employees,” as that term is defined by 40 C.F.R. § 372.3.
7. The facility is classified in a Standard Industrial Classification code or National Industrial Classification System code set forth in 40 C.F.R. § 372.23.
8. During the calendar years 2007 and 2008, Respondent manufactured, processed or otherwise used toxic chemicals listed under 40 C.F.R. § 372.65 in quantities exceeding the established thresholds.
9. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to Respondent's facility.

## VIOLATIONS

### Count I

10. The foregoing paragraphs 1 through 9 are incorporated by reference as if fully set forth herein.

11. During the calendar year 2007, Respondent manufactured, processed or otherwise used lead compounds, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold of 100 pounds. Respondent was therefore required to submit to the Administrator of EPA a Form R for this chemical category on or before July 1, 2008.

12. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2008.

13. Respondent's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

### Count II

14. The foregoing paragraphs 1 through 13 are incorporated by reference as if fully set forth herein.

15. During the calendar year 2008, Respondent manufactured, processed or otherwise used lead compounds, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold of 100 pounds. Respondent was therefore required to submit to the Administrator of EPA a Form R for this chemical category on or before July 1, 2009.

16. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2009.

17. Respondent's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

### Proposed Civil Penalty

Section 325(c) of EPCRA, 42 U.S.C. §11045(c), and 40 C.F.R. § 372.18, as amended at 40 C.F.R. Part 19, provide that any person who violates any requirement of Section 313 after March 15, 2004 and on or before January 12, 2009 shall be liable to the United States for a civil penalty not to exceed \$32,500 per day for each such violation, and any person who violates any requirement of Section 313 after January 12, 2009 shall be liable to the United States for a civil penalty not to exceed \$37,500 per day for each such violation. Failure to report in a timely manner, as required by Section 313, may deprive the community of its right to know about chemicals used or stored near or in the neighborhood that may affect public health and the environment, compromise the validity of health studies based on consequently inaccurate data bases, and prevent comprehensive planning by federal, state and local authorities to clean up industrial pollution.

The proposed civil penalty has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). For purposes of determining the amount of any penalty to be assessed, EPA considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)" [as amended through April 6, 2010] ("ERP"), a copy of which is enclosed with this

Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

The ERP states that a gravity-based penalty should be determined by considering the “circumstance level” and the “extent level” of a violation. The circumstance level of a violation takes into account the seriousness of the violation as it relates to the accuracy and availability of the information to the community, states, and federal government. The extent level of a violation is based upon the quantity of each EPCRA Section 313 chemical manufactured, processed, or otherwise used by the facility, and the size of the facility, which is based upon the number of employees and the gross sales of the violating facility. The ERP also allows other adjustments to the penalty if a violation is voluntarily disclosed, the facility has a prior violation, or the subject chemical or chemical category has been delisted.

On the basis of the above variables, the Regional Administrator has determined the amount of the civil penalty to be assessed against Respondent. As described below, this penalty was computed by using a multiple stage process in accordance with the ERP.

The first stage requires the determination of the circumstance level of the violation. Respondent failed to submit, within one year of the July 1 due date, Form Rs for calendar years 2007 and 2008 for lead compounds, a chemical category listed under 40 CFR § 372.65 that it manufactured, processed or otherwise used in quantities exceeding the established threshold. The ERP designates failure to report in a timely manner (and not reported within one year of the due date) as a “Level 1” violation. Thus, the applicable circumstance level for Counts I and II of this Complaint is “Level 1.”

The second stage in calculating the proposed penalty requires the determination of the extent level. Respondent manufactured, processed or otherwise used more than ten times the

reporting threshold of lead, the Section 313 chemical involved in the violations. The other factors considered are that Respondent has less than ten million dollars in total corporate sales and less than fifty employees at the violating facility. Based upon these factors, the applicable extent level for Counts I and II of this Complaint is “Level B.”

In addition to the determination of the applicable circumstance and extent levels for each count in this Complaint, Complainant considered other factors which may be used to adjust the penalty amount. In particular, Complainant considered Respondent's failure to voluntarily disclose the violations, its lack of prior violations, and that the subject chemicals/chemical categories have not been delisted. After this review, Complainant proposes no further adjustments to the gravity-based penalty amount. Note, however, that the proposed penalty is based upon the best information available to EPA at this time, and may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

Based upon the foregoing factors, Complainant proposes that Respondent be assessed a civil penalty in the amount of forty-six thousand dollars (\$46,000) for the violations alleged in this Complaint. For each violation, the proposed penalty is as follows (the total amount is rounded to the nearest hundred):

Count I: .....	\$21,922
Count II: .....	\$24,080
Total: .....	\$46,000

**NOTICE OF OPPORTUNITY TO  
REQUEST A HEARING**

In accordance with 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22, a copy of which is enclosed herewith.

**To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and having the above-cited penalty assessed without further proceedings, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

Respondent should also send a copy of the Answer and all other documents which Respondent files in this action to Sarah Meeks, the attorney assigned to represent EPA in this matter, at:

Sarah Meeks  
Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES 04-3  
Boston, MA 02109-3912  
(617) 918-1438

If Respondent fails to file a timely answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations.

#### **INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a hearing, Respondent may confer informally with Chris Rascher, EPCRA 313 Enforcement Coordinator in EPA Region I's Office of Environmental Stewardship (617-918-1834), concerning the facts of this case or the amount of the proposed penalty. Respondent's attorney is encouraged to contact Sarah Meeks, Enforcement Counsel, at 617-918-1438, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

**Please note that a request for an informal settlement conference does not expand the thirty-day period within which a written Answer must be submitted to avoid default.**

Payment of the civil penalty alone does not satisfy Respondent's legal obligation to file complete and accurate toxic chemical release forms (Form R). If Respondent chooses to remit the proposed penalty, it is still under a legal duty to submit complete and accurate Form Rs. Failure or refusal to file such forms may subject Respondent to additional civil penalties of up to \$37,500 per day of violation.

Sarah Meeks, Enforcement Counsel, at the above address and telephone, has been designated to represent Complainant and is authorized to receive service of process in this action.

12/16/10  
Date

Joanna Jerison  
Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

In the Matter of:	)	
	)	
Lamb & Ritchie Company, Inc.	)	Docket No. EPCRA-01-2011-0008
90 Broadway	)	
Saugus, MA 01906	)	
	)	
Respondent.	)	<b>CERTIFICATE OF SERVICE</b>
	)	

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and One Copy,  
By Hand:

Wanda Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

Copy, including 40 C.F.R.  
Part 22 and EPCRA Section 313  
Enforcement Response Policy,  
Certified Mail Return Receipt  
Requested:

David Ritchie, President  
Lamb & Ritchie Company, Inc.  
90 Broadway  
Saugus, MA 01906

Dated: 12/16/10

  
\_\_\_\_\_  
Sarah Meeks, Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES 04-3  
Boston, Massachusetts 02109-3912  
Telephone: (617) 918-1438