

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:

Superior Printing Ink Co., Inc.
750 Sherman Ave.
Hamden, CT 06514

Respondent.

Docket No. EPCRA-01-2009-0098

ADMINISTRATIVE COMPLAINT
AND
NOTICE OF
OPPORTUNITY FOR HEARING

RECEIVED

SEP 17 P 3 48

REC'D
OFFICE OF
GENERAL COUNSEL
CLERK

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"). Complainant is the Manager of the Legal Enforcement Office of the Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1 ("Complainant"). This Complaint alleges that Superior Printing Ink Co., Inc. ("Respondent") violated Section 312(a) of EPCRA, 42 U.S.C. §11022(a), and the federal regulations that set out in greater detail these statutory requirements, 40 C.F.R. Part 370.

Under Section 312(a) of EPCRA and 40 C.F.R. §§370.20 and 370.25, any facility that is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder must prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II form) to the local emergency planning committee ("LEPC"), the state emergency

response commission ("SERC"), and the local fire department. The Tier I or Tier II form must be submitted annually on or before March 1 and is required to contain information with respect to the preceding calendar 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 312 after March 15, 2004 shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each such violation.

General Allegations and Statement of Facts

1. Respondent is a corporation organized under the laws of the State of New York with a usual place of business at 70 Bethune Street, New York, NY 10014.
2. Respondent owns and operates a large ink manufacturing facility located at 750 Sherman Avenue, Hamden CT 06514 (the "facility").
3. On or about July 17, 2008, duly authorized representatives of EPA inspected Respondent's facility. The purpose of the inspection was to determine Respondent's compliance with EPCRA 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. §370.2.

6. At all times relevant to the violations cited herein, Respondent stored the following twelve "hazardous chemicals" as defined under 29 C.F.R. §1910.1200(c), in quantities that exceed the minimum threshold level ("MTL") set forth in 40 C.F.R. §370.20(b)(1) and (4), as well as four mixtures at the facility: sulfuric acid (an "extremely hazardous substance" under 40 C.F.R. §370.20(b)) and lead contained in forklift batteries; tech white oil; sweet mid distillate; linseed oil; chinawood oil; alkyd; resin; black pigment; red pigment; yellow pigment; blue pigment; drier (mixture); vehicle (mixture); intermediate (mixture); and finished ink (mixture).

7. At all times relevant to the violations cited herein, Respondent was required, pursuant to the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder ("OSHA"), to prepare or have available a MSDS on site for each of the hazardous chemicals listed in Paragraph 6.

Count I

8. During calendar year 2006, Respondent stored the chemicals listed in Paragraph 6 at the facility in quantities that exceed the minimum threshold levels set forth in 40 C.F.R. §370.20(b).

9. Respondent was required to prepare and submit an emergency and hazardous chemical inventory (Tier II) form to the SERC, LEPC and the local fire department with jurisdiction over the facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. §11022(d), for calendar year 2006 on or before March 1, 2007.

10. Respondent failed to prepare and submit a Tier II form by March 1, 2007 to the SERC, LEPC and the local fire department, in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. §11022(a), and 40 C.F.R. §§370.20 and 370.25.

11. Respondent is therefore subject to an assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. §11045(c)(1), and 40 C.F.R. Part 19.

Count II

12. During calendar year 2005, Respondent stored the chemicals listed in Paragraph 6 at the facility in quantities that exceed the minimum threshold levels set forth in 40 C.F.R. §370.20(b).

13. Respondent was required to prepare and submit an emergency and hazardous chemical inventory (Tier II) form to the SERC, LEPC and the local fire department with jurisdiction over the facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. §11022(d), for calendar year 2005 on or before March 1, 2006.

14. Respondent failed to prepare and submit a Tier II form by March 1, 2006 to the SERC, LEPC and the local fire department, in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. §11022(a), and 40 C.F.R. §§370.20 and 370.25.

15. Respondent is therefore subject to an assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. §11045(c)(1), and 40 C.F.R. Part 19.

Count III

16. During calendar year 2004, Respondent stored the chemicals listed in Paragraph 6 at the facility in quantities that exceed the minimum threshold levels set forth in 40 C.F.R. §370.20(b).

17. Respondent was required to prepare and submit an emergency and hazardous chemical inventory (Tier II) form to the SERC, LEPC and the local fire department with

jurisdiction over the facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for calendar year 2001 on or before March 1, 2005.

18. Respondent failed to prepare and submit a Tier II form by March 1, 2005 to the SERC, LEPC and the local fire department, in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. §11022(a), and 40 C.F.R. §§370.20 and 370.25.

19. Respondent is therefore subject to an assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. §11045(c)(1), and 40 C.F.R. Part 19.

Proposed Civil Penalty

20. Section 325(c) of EPCRA, 42 U.S.C. §11045(c), 40 C.F.R. §370.5(b), and 40 C.F.R. Part 19, provide that any person who violates any requirement of Section 312 of EPCRA after March 15, 2004 shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each violation. Failure to report in a timely manner, as required by Section 312, 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, and may prevent comprehensive planning by federal, state and local authorities to properly prepare for accidental chemical releases.

21. 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 "Interim Final 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, as amended March 3, 2005 and June 5, 2006) ("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.

22. Pursuant to Part V of the ERP, the first stage of calculating a penalty requires the determination of the "extent" level of the violation and the second stage concerns the "gravity" level of the violation. The "extent" of the violation alleged in Count I was determined to be "Level 1" because Respondent failed to submit the Tier II chemical inventory form to the SERC, LEPC or fire department with 30 calendar days of the reporting deadline. The "gravity" of the violation alleged in Count I was determined to be "Level A" because the largest amount of hazardous chemical not reported was more than 10 times the reporting threshold.

23. Under the ERP, EPA has discretion to select an amount within the range specified in the appropriate matrix box. Respondent's failure to submit the Tier II form was determined to fall in the mid-point of the Level 1-A matrix box, based on the circumstances of the violation, resulting in a penalty of \$28,340.

24. Pursuant to Part VI of the ERP, for each non-reporting year prior to the most recent reporting period at the time of the EPA inspection, a flat penalty of \$1,500 per year is proposed, regardless of the number of entities that failed to receive the report. Therefore, a flat

penalty of \$1,500 is proposed for Respondent's failure to submit Tier II forms for calendar years 2005 and 2004, the violations alleged in Counts II and III, respectively.

25. After consideration of the Respondent's failure to voluntarily disclose the violations, its lack of a history of prior violations, degree of culpability, and economic benefit, the Complainant proposes no further adjustments to the gravity-based penalty amounts for the Section 312 violations.

26. The proposed penalty as stated in this Complaint was developed based on the best information available to the Agency at this time and may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

27. Based upon the violations cited in this Complaint, and taking into account the nature, circumstances and gravity of these violations, the Complainant proposes that Respondent be assessed a civil penalty in the amount of \$31,340 for the violations alleged in this Complaint. For each violation, the proposed penalty is as follows:

Count I	\$28,340
Count II	\$ 1,500
Count III	\$ 1,500

**NOTICE OF OPPORTUNITY TO
REQUEST A HEARING**

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 Part 22, a copy of which is enclosed with this Complaint.

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:

Regional Hearing Clerk (RAA)
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

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

Amelia Welt Katzen
Senior Enforcement Counsel (SEL)
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

Informal Settlement Conference

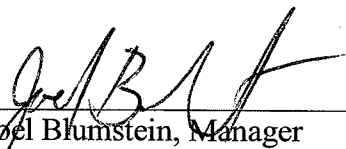
Whether or not Respondent requests a hearing, Respondent may confer informally with Rosina Toscano, Environmental Engineer in the EPA Region 1 Office of Environmental Stewardship, (617) 918-1861, concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent's attorney is encouraged to contact Amelia Welt Katzen, Senior Enforcement Counsel, at (617) 918-1869, 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 enlarge 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 emergency and hazardous chemical inventory forms (Tier I or Tier II forms). If Respondent chooses to remit the proposed penalty, it is still under a legal duty to submit complete and accurate Tier I or Tier II forms. Failure or refusal to file such forms may subject Respondent to additional civil penalties of up to \$32,500 per day of violation.

Amelia Welt Katzen, Senior 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.

9/16/09
Date



Joel Blumstein, Manager
Legal Enforcement Office
Office of Environmental Stewardship
U.S. EPA, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:)	
)	
Superior Printing Ink Co., Inc.)	Docket No. EPCRA-01-2009-0098
750 Sherman Ave.)	
Hamden, CT 06514)	CERTIFICATE OF SERVICE
)	
Respondent)	

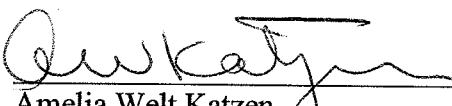
I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and One Copy (Hand-Delivered):	Wanda Santiago Regional Hearing Clerk (RAA) U.S. Environment Protection Agency, Region I One Congress Street, Suite 1100 Boston, MA 02114-2023
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Copy, including 40 C.F.R. Part 22 and Section 312 ERP (Certified Mail, Return Receipt Requested):	Jeffrey Simons, President Superior Printing Ink Co., Inc. 70 Bethune Street New York, NY 10014
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Copy (Certified Mail, Return Receipt Requested):	M.A. Locascio, Branch Manager Superior Printing Ink Co., Inc. 750 Sherman Ave. Hamden, CT 06514
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Dated: 9/17/09


Amelia Welt Katzen
Senior Enforcement Counsel (SEL)
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023
Tel. (617) 918-1869
Fax (617) 918-0869



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET, SUITE 1100
BOSTON, MA 02114-2023

RECEIVED
2009 SEP 17 10:30 AM
Reply to: (617) 918-1869
Fax: (617) 918-1809
Mail Code: SEL

September 17, 2009

BY HAND

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (RAA)
One Congress Street, Suite 1100
Boston, MA 02114-2023

Re: In the matter of Superior Printing Ink Co., Inc.
EPA Docket No. EPCRA-01-2009-0098

Dear Regional Hearing Clerk:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

Amelia Welt Katzen
Senior Enforcement Counsel

Enclosures

cc: Jeffrey Simons, Superior Printing Ink Co., Inc.
Rose Toscano, EPA Region 1

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK