

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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REGIONAL HEARING CLERK  
US EPA REGION V

2008 AUG -8 PM 12: 55

IN THE MATTER OF: )

Electro -Max, Inc. Hampshire, )  
Illinois )  
Respondent )

DOCKET NO.: EPCRA-05-2008-  
0015

**CERTIFICATE OF SERVICE BY MAIL**

I, Christopher T. Nowotarski, attorney certify; that I served Answer to Amended Complaint, copies being attached hereto, to the attached service list by mailing a copy to the attached service list by depositing same in the U.S. mail at 1 East Wacker Drive, Chicago, Il. on or before 5:00 P.M. on July 30, 2008 with proper postage prepaid. Service to the Regional Hearing Clerk is by certified mail, receipt No. 7007 2560 0002 7768 0137.

Date: July 30, 2008

  
\_\_\_\_\_  
Christopher T. Nowotarski

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
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IN THE MATTER OF: )

Electro-Max, Inc. )  
Hampshire, Illinois )

Respondent )

2008 AUG -8 PM 12: 57  
DOCKET NO.: EPCRA-05-2008-  
0015

Proceeding to Assess a Civil Penalty  
Under Section 325(c) of the  
Emergency Planning and  
Community Right-to-Know Act of  
1986, 42 U.S.C. § 11045 (c)

**ANSWER TO**  
**AMENDED COMPLAINT**

**NOW COMES**, Electro-Max, Incorporated, by and through its attorneys, Stone Pogrud & Korey LLC, and for its Answer to Amended Complaint:

1. This is an administrative action to assess a civil penalty under Section 325 (c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c).

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

2. Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

3. Respondent is Electro-Max, Inc. a corporation doing business in the State of Illinois.

**ANSWER:** Respondent admits the allegations of paragraph 3.

4. On June 30, 2008, Complainant filed a Complaint against Respondent alleging three violations of Section 313 of EPCRA and its implementing regulations.

**ANSWER:** Respondent admits the allegations of paragraph 4.

5. As of the date of the filing of this Amended Complaint, Respondent has not yet filed an Answer to the Complaint.

**ANSWER:** Respondent admits the allegations of paragraph 5.

#### **Statutory and Regulatory Background**

6. The U.S. EPA promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rule at 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048.

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

7. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more fulltime employees, is in a Standard Industrial Classification (SIC) codes 20 through 39, and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) and listed at 40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313 (f) and in 40 C.F.R. §§ 372.25, 372.27 and 372.28.

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

8. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to complete and submit to the Administrator of U.S. EPA and to the state in which the facility is located, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f).

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

9. The U.S. EPA published the Toxic Chemical Release Inventory Reporting Form, U.S. EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R § 372.85 pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g).

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

10. All persons required to report pursuant to Section 313(b) must use Form R according to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

11. The Administrator of U.S. EPA may prescribe regulations as may be necessary to carry out EPCRA. 42 U.S.C. § 11048.

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

12. Section 325(c) (1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. The U.S EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 that occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

### General Allegations

13. Respondent is a "person as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

14. Respondent is a corporation doing business in the State of Illinois.

**ANSWER:** Respondent admits the allegations of paragraph 14.

15. Respondent owned or operated a facility located at 105 N. Rowell Road, Hampshire, IL 60140 during calendar year 2002.

**ANSWER:** Respondent admits the allegations of paragraph 15.

16. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned by the same person, entity, or corporation.

**ANSWER:** Respondent admits the allegations of paragraph 16.

17. During calendar year 2002, Respondent employed at its facility the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.

**ANSWER:** Respondent admits the allegations of paragraph 17.

18. Respondent's facility is covered by SIC Code 3471.

**ANSWER:** Respondent admits the allegations of paragraph 18.

19. During calendar year 2002, Respondent produced at least 25,000 pounds of nitrate compounds.

**ANSWER:** Respondent admits the allegations of paragraph 19.

20. During calendar year 2002, Respondent used at least 10,000 pounds of nitric acid.

**ANSWER:** Respondent admits the allegations of paragraph 21.

21. During calendar year 2002, Respondent “manufactured,” as defined by 40 C.F.R. § 372.3, nitrate compounds, in quantities exceeding thresholds for reporting set forth at Section 313(f) abd at 40 C.F.R. § 372.25.

**ANSWER:** Respondent admits the allegations of paragraph 21.

22. During calendar year 2002, Respondent “otherwise used,” as defined by 40 C.F.R. § 372.3, nitric acid, in quantities exceeding thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.25.

**ANSWER:** Respondent admits the allegations of paragraph 22.

23. On June 21, 2006, a representative of the U.S. EPA contacted Respondent by telephone to provide notice of an upcoming inspection of Respondent’s facility.

**ANSWER:** Respondent denies the allegations of paragraph 23.

24. By letter dated June 26, 2006, a representative of the U.S. EPA confirmed that he would be conducting an inspection evaluating Respondent’s compliance with Section 313 of EPCRA for calendar year 2002.

**ANSWER:** Respondent admits the allegations of paragraph 24, but for further affirmative answer, Respondent stats that said letter was not received until after June 26, 2006.

25. On July 19, 2006, a representative of the U.S. EPA inspected Respondent’s facility.

**ANSWER:** Respondent admits the allegations of paragraph 25.

### COUNT I

26. Complainant incorporates paragraphs 1 through 25 of this Amended Complaint as if set forth in this paragraph.

**ANSWER:** Respondent incorporates the answers to paragraphs 1 through 25 by reference as though set forth here in full.

27. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is otherwise used during the 2002 calendar year is 10,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(b).

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

28. During the 2002 calendar year, Respondent's facility otherwise used at least 34,680 pounds of nitric acid, CAS No. 7697-37-2.

**ANSWER:** Respondent admits the allegations of paragraph 28.

29. Nitric acid is a chemical identified at Section 313 (c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

30. Nitric acid is a "toxic chemical," as defined by 40 C.F.R. § 372.3.

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

31. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for nitric acid for the 2002 calendar year on or before July 1, 2003.

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

32. Respondent failed to submit to the Administrator of U.S. EPA a Form R for nitric acid for the 2002 calendar year on or before July 1, 2003.

**ANSWER:** Respondent admits the allegations of paragraph 22 but affirmatively alleges that said Form R was submitted prior to any inspection by U.S.EPA and in accordance with U.S.EPA settlement protocol, no penalty should be assessed against Respondent.



33. On June 30, 2006, Respondent submitted to the Administrator of U.S. EPA a Form R for nitric acid for the 2002 calendar year.

**ANSWER:** Respondent admits the allegations of paragraph 30.

34. Respondent's failure to submit timely to the Administrator of U.S. EPA a Form R for nitric acid for the 2002 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30

**ANSWER:** Respondent denies the allegations of paragraph 34.

## **COUNT II**

35. Complainant incorporates paragraphs 1 through 25 of this Amended Complaint as if set forth in this paragraph.

**ANSWER:** Respondent incorporates the answers to paragraphs 1 through 25 by reference as though set forth here in full.

36. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is manufactured during the 2002 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

37. During the 2002 calendar year, Respondent's facility manufactured at least 36,741 pounds of nitrate compounds, a chemical category.

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

38. Nitrate compounds are a group of chemicals identified at Section 313 (c) of EPCRA, 42 U.S.C. § 11023 (c), and a chemical category listed at 40 C.F.R. § 372.65 (c).

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

39. Nitrate compounds are a “toxic chemical,” as defined by 40 C.F.R. § 372.3.

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

40. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for nitrate compounds for the 2002 calendar year on or before July 1, 2003.

**ANSWER:** This paragraph states legal conclusions that do not require an answer from Respondent.

41. Respondent failed to submit to the Administrator of U.S. EPA a Form R for nitrate compounds for the 2002 calendar year on or before July 1, 2003.

**ANSWER:** Respondent admits the allegations of paragraph 22 but affirmatively alleges that said Form R was submitted prior to any inspection by U.S.EPA and in accordance with U.S.EPA settlement protocol, no penalty should be assessed against Respondent.

42. On June 30, 2006, Respondent submitted to the Administrator of U.S EPA a Form R for nitrate compounds for the 2002 calendar year.

**ANSWER:** Respondent admits the allegations of paragraph 42.

43. Respondent’s failure to submit timely to the Administrator of U. S. EPA a Form R for nitrate compounds for the 2002 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

**ANSWER:** Respondent denies the allegations of paragraph 34.

### **Proposed Penalty**

44. Complainant proposes that the Administrator assess a civil penalty against Respondent for the EPCRA violations alleged in this Amended Complaint as follows:

**Count I**

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for nitric acid for calendar year 2002:

CAS No. 7697-37-2.....\$5,500

**Count II**

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for nitrate compounds for calendar year 2002:

Chemical category.....\$5,500

**Total Proposed Civil Penalty.....\$11,000**

Complainant has determined the proposed civil penalty according to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). In determining the proposed penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. 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)(amended)*(April 12, 2001), a copy of which is enclosed with this Amended Complaint.

**ANSWER:** Respondent denies any civil penalty is due, required or appropriate and contests the proposed penalties.

**Rules Governing this Proceeding**

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Amended Complaint served on Respondent is a copy of the Consolidated Rules.

**OPPORTUNITY TO REQUEST A HEARING**

Respondent hereby requests a hearing to contest all of the material facts in this Complaint and to contest the amount of the proposed penalty as provided for in Section 3008 of RCRA, 42 U.S.C. § 6928(b), and in accordance with 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,” codified at 40 C.F.R. § 22.15(a).


**Settlement Conference**

Respondent hereby requests a hearing to contest all of the material facts in this Complaint and to contest the amount of the proposed penalty as provided for in Section 3008 of RCRA, 42 U.S.C. § 6928(b), and in accordance with 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,” codified at 40 C.F.R. § 22.15(a).

**V. SETTLEMENT CONFERENCE**

Respondent hereby requests an informal conference to discuss the facts of this case and to arrive at a settlement.

Respectfully submitted,  
**ELECTRO-MAX, Inc., an Illinois  
corporation**

By:   
Christopher T. Nowotarski  
One of Respondent’s attorneys

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