

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Gelita USA, Inc.  
Sergeant Bluff, Iowa 51054

Respondent

) Docket No. EPCRA-07-2006-0257  
)  
) COMPLAINT AND NOTICE OF  
) OPPORTUNITY FOR HEARING  
)  
)

COMPLAINT

Section 1

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325 of the Emergency Planning and Community Right to Know Act of 1986 (hereinafter "EPCRA"), 42 U.S.C. § 11045.

2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated Section 313 of EPCRA, 42 U.S.C. § 11023 and the regulations promulgated there under and codified at 40 C.F.R. § 372 governing the submission of toxic chemical release inventories by owners and operators of covered facilities.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA and Toxics Division, EPA, Region 7.

4. The Respondent is Gelita USA, Inc., a gelatin manufacturing business, incorporated and registered to do business in the State of Iowa, and located at 2445 Port Neal Industrial Drive, Sergeant Bluff, Iowa 51054.

### Section III

#### Statutory and Regulatory Requirements

5. Section 313 of EPCRA and 40 C.F.R. §§ 372.22 and 372.30 require that the owner or operator of a facility:

- a. has 10 or more full time employees;
- b. has a Standard Industrial Classification (SIC) code of 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and
- c. manufactured, processed or otherwise used a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25 during the calendar year,

to complete and submit a toxic chemical release inventory form (hereinafter "Form R") to the Administrator of EPA and to the State in which the subject facility is located by July 1 for the preceding calendar year for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in quantities exceeding the established threshold quantity during that preceding calendar year.

6. As set forth in Section 313(f) of EPCRA and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds per calendar year.

### Section IV

#### VIOLATIONS

The Complainant hereby states and alleges that Respondent has violated EPCRA and regulations there under as follows:

#### Count I

7. On or about May 17, 2006, an authorized EPA representative conducted an inspection to determine compliance with EPCRA Section 313 at Respondent's facility located at 2445 Port Neal Industrial Drive, Sergeant Bluff, Iowa (hereinafter "Respondent's facility").

8. Respondent is a "person" as defined at Section 329(7) of EPCRA, and is the owner or operator of a "facility" as defined at Section 329(4) of EPCRA.

9. Respondent has 10 or more full-time employees at its facility, as defined at 40 C.F.R. § 372.22.
10. The facility has two SIC codes: 2899 and 2099.
11. The May 17, 2006, inspection of Respondent's facility revealed that in calendar year 2003, Respondent manufactured Nitrate Compounds in excess of 25,000 pounds.
12. Nitrate Compounds are toxic chemicals listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.
13. Pursuant to 40 C.F.R. § 372.25, a facility which otherwise uses a toxic chemical above the applicable threshold amount must report if it exceeds any applicable threshold amount and must report on all activities at the facility involving the chemical.
14. Respondent failed to submit a Form R for calendar year 2003 for Nitrate Compounds to the Administrator of EPA and to the State of Iowa by July 1, 2004, which is a violation of EPCRA Section 313 and 40 C.F.R. Part 372.
15. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 7 through 14 above, it is proposed that a civil penalty of Twenty One Thousand Nine Hundred Dollars (\$21,900) be assessed against Respondent.

Count II

16. The facts stated in paragraph 7 through 10 above are herein incorporated.
17. The May 17, 2006, inspection of Respondent's facility revealed that in calendar year 2004, Respondent manufactured Nitrate Compounds in excess of 25,000 pounds.
18. Nitrate Compounds are toxic chemicals listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65.
19. Pursuant to 40 C.F.R. § 372.25, a facility which otherwise uses a toxic chemical above the applicable threshold amount must report if it exceeds any applicable threshold amount and must report on all activities at the facility involving the chemical.
20. Respondent failed to submit a Form R for calendar year 2004 for Nitrate Compounds to the Administrator of EPA and to the State of Iowa by July 1, 2005, which is a violation of EPCRA Section 313 and 40 C.F.R. Part 372.
21. Pursuant to Section 325(c) of EPCRA, and based upon the facts stated in paragraphs 16 through 20 above, it is proposed that a civil penalty of Eighteen Thousand Three Hundred (\$18,300) be assessed against Respondent.

Section V

Relief

22. Section 325(c) of EPCRA, authorizes a civil penalty of not more than Twenty-Five Thousand (\$25,000) for each violation of Section 313 of EPCRA. Under the Debt Collection Improvement Act of 1996 as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, penalties of up to Thirty-Two Thousand Five Hundred (\$32,500) for each violation of Section 313 of EPCRA may be assessed for violations that occur after March 15, 2004. The penalties proposed in paragraphs 15 and 21, above, are based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above-cited violations, and with respect to the Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require in accordance with EPCRA and the Enforcement Response Policy for Section 313 of EPCRA. These policies provide a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

23. The proposed penalties as set forth in this Complaint are based on the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the Respondent establishes bonafide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

24. A Summary of the Proposed Penalties is contained in the enclosed Penalty Calculation Summary attached hereto and incorporated herein by reference.

25. Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk.

26. Payment of the total penalty, Forty Thousand Two Hundred Dollars - \$40,200 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

EPA - Region 7  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

Checks should reference the name and docket number of the Complaint.

Note that payment of the proposed penalty alone does not satisfy Respondent's legal obligation to file complete and accurate notifications and reports as required by Section 313 of EPCRA and 40 C.F.R. Part 372. Failure or refusal to file said notifications and reports may subject Respondent to additional civil penalties.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Section VI

Answer and Request for Hearing

27. If Respondent pays the proposed penalty within thirty (30) days after receiving the Complaint, then no Answer need be filed.
28. Any Respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an Answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving the Complaint stating that Respondent agrees to pay the proposed penalty in accordance with Rule 22.18(a)(1) of 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. Part 22, (hereinafter "Consolidated Rules"). The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject the Respondent to default.
29. Respondent may request a hearing to contest any material fact contained in this Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules, a copy of which is enclosed herewith.
30. To avoid being found in default, which constitutes an admission of all facts alleged in this Complaint and a waiver of Respondent's right to contest such factual allegations, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state: (a) the circumstances or arguments, which are alleged to constitute the grounds of defense; (b) the facts that Respondent intends to place at issue; and (c) whether a hearing is requested.
31. Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations. The answer shall be filed with the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101

32. If within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, Respondent fails to: (1) submit full payment of the penalty; or (2) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty; or (3) file a written answer and request for a hearing; Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered unless the penalty is clearly inconsistent with the record of the proceeding or EPCRA.

## Section VII

### Informal Settlement Conference

33. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Kelley Hickman  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101  
Telephone (913) 551-7110

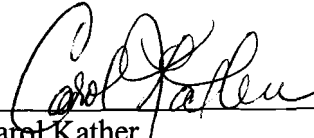
34. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

35. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement through an informal settlement conference. Any settlement, which may be reached as a result of such a conference, shall be embodied in a written Consent Agreement and Final Order. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

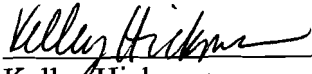
36. If Respondent has neither achieved a settlement by informal conference nor filed an answer within the thirty (30) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

Date

8/24/06



\_\_\_\_\_  
Carol Kather  
Acting Director  
Air, RCRA and Toxics Division



\_\_\_\_\_  
Kelley Hickman  
Assistant Regional Counsel

Enclosures:   Penalty calculation Summary  
                  Part 22 - Consolidated Rules of Practice Governing the Administrative  
                  Assessment of Civil Penalties  
                  Enforcement Response Policy for Section 313 of EPCRA, including Updated  
                  Matrix

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true and correct copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Penalty Calculation Summary; a copy of Part 22 - the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties; and a copy of the April 12, 2001, Enforcement Response Policy for Section 313 of EPCRA and updated Matrix, to the following:

Corporation Service Company  
Registered Agent for  
Gelita USA, Inc.  
729 INS Exch Bldg  
Des Moines, Iowa 50309

July 25, 2006  
Date

Kelley Hickman  
Kelley Hickman



PENALTY CALCULATION FOR:

**GELITA USA INC**  
**Sergeant Bluff, Iowa**

**COUNT 1**

**VIOLATION:** Failure to submit Form R for Nitrate Compounds to State of Iowa and EPA.

**EXTENT:** LEVEL B - Description: Less than 10 times reporting threshold; more than \$10 million annual sales; greater than 50 employees

**CIRCUMSTANCE:** LEVEL 1 - Description: Failure to submit Form R for Nitrate Compounds for calendar year 2003 by July 1, 2004

**GRAVITY BASED**

**PENALTY:** \$ 21,922

**PROPOSED**

**PENALTY:** \$ 21,900

**COUNT 11**

**VIOLATION:** Failure to submit Form R for Nitrate Compounds to State of Iowa and EPA.

**EXTENT:** LEVEL B - Description: Less than 10 times reporting threshold; more than \$10 million annual sales; greater than 50 employees

**CIRCUMSTANCE:** LEVEL 1 - Description: Failure to submit Form R for Nitrate Compounds for calendar year 2004 by July 1, 2005

**GRAVITY BASED**

**PENALTY:** \$ 18,300

**PROPOSED**

**PENALTY:** \$ 18,300

**TOTAL PROPOSED PENALTY: \$ 40,200**

**Formula used for Count II from ERP**

$$21,922 * (10 \text{ months}/12 \text{ months}) = 18,268.00$$

The penalty was prorated for 2004 because only ten months lapsed from the time the Form R was due (July 1, 2005) to the inspection date (May 17, 2006).