



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

JAN 29 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Article No.: 7014 1200 0000 6127 1798

Debra L. Loganbill
Registered Agent for Service
Loganbill Fertilizer, Inc.
12366 Highway E
Versailles, Missouri 65084

Re: Loganbill Fertilizer, Inc.
Complaint and Notice of Opportunity for Hearing

Dear Ms. Loganbill:

Enclosed is an administrative Complaint and Notice of Opportunity for Hearing which alleges that Loganbill Fertilizer, Inc. violated provisions of the Emergency Planning and Community Right-to-Know Act (EPCRA). This document proposes the assessment of civil penalties.

Violations of EPCRA are alleged on pages 4 to 6 of the Complaint. Your attention is directed to pages 6 to 8 of the Complaint, which describes Loganbill Fertilizer's options and responsibilities in responding to the Complaint, including filing an Answer within 30 days. Page 7 of the Complaint provides information on settling the Complaint through informal settlement negotiations.

If you have any questions concerning this case, please contact Howard Bunch, the attorney assigned to this case. He can be reached at (913) 551-7879.

Sincerely,

A handwritten signature in black ink, appearing to read "Becky Weber".

Becky Weber

Director

Air and Waste Management Division

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

2018 JAN 29 AM 10:03

11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of:)	
)	
LOGANBILL FERTILIZER, INC.)	Docket No. EPCRA-07-2018-0150
Syracuse and Versailles, Missouri)	
)	COMPLAINT AND NOTICE OF
Respondent,)	OPPORTUNITY FOR HEARING
)	
Proceeding under Section 325(c) of the)	
Emergency Planning and Community Right-)	
to-Know Act, 42 U.S.C. § 11045(c))	
_____)	

COMPLAINT

Jurisdiction

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

2. This Complaint serves as notice that the United States Environmental Protection Agency (“EPA”) has reason to believe that Respondent has violated Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 370.

Parties

3. Complainant, by delegation from the Administrator of EPA and from the Regional Administrator of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. Respondent is Loganbill Fertilizer, Inc. (Loganbill Fertilizer), a corporation registered and authorized to conduct business in the State of Missouri. Loganbill Fertilizer operates an agricultural products business (including dry fertilizers and pesticides) addressed at 600 Highway 5, Syracuse, Missouri 65354 (“Syracuse facility”), as well as a separate facility addressed at 12266 Highway E, Versailles, Missouri 65084 (“Versailles facility”).

Statutory and Regulatory Requirements

5. Section 312 of EPCRA, 42 U.S.C. § 11022, and the implementing regulations at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (“MSDS”) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (“OSHA”) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (“LEPC”), the State Emergency Response Commission (“SERC”), and the fire department with jurisdiction over the facility, by March 1, 1988, and annually thereafter, a completed emergency and hazardous chemical inventory form (Tier I or Tier II report, (See 40 C.F.R. §§ 370.30-45).

6. The Tier I or Tier II report must contain the information required by Section 312(d) of EPCRA and 40 C.F.R. Part 370 for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds, per 40 C.F.R. § 370.10(a)(2)(i), and for extremely hazardous substances present at the facility at any one time in an amount equal to or greater than the threshold planning quantity designated in the appendices to 40 C.F.R. Part 355, or 500 pounds, whichever is lower, per 40 C.F.R. § 370.10(a)(1).

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, if, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Sections 312 or 313, 42 U.S.C. §§ 11022 or 11023. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalty Inflation Adjustment Act of 2015, as well as implementing regulations at 40 C.F.R. Part 19, authorize the United States to assess civil administrative penalties of up to \$37,500 per day for violations that occurred between January 12, 2009, and November 2, 2015.

Definitions

8. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines “person” as “any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.”

9. The regulations at 40 C.F.R. § 370.66 define “hazardous chemical” as any hazardous chemical as defined by 29 C.F.R. § 1910.1200(c), which includes any chemical that is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

10. The regulations at 40 C.F.R. § 370.66 define “inventory form” to mean the uniform Tier I and Tier II emergency and hazardous chemical inventory published by EPA.

11. EPCRA § 329(4), 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66 define “facility” as all buildings, equipment, structures, and other stationary items which are located on a single

site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person).

General Factual Allegations

12. Respondent Loganbill Fertilizer is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

13. The Syracuse and Versailles facilities are each a facility as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66. At all times relevant to the allegations in this Complaint, Respondent Loganbill Fertilizer owned and/or operated the Syracuse and Versailles facilities.

14. During calendar year 2012, at the Syracuse and/or Versailles facilities, Respondent stored ammonium nitrate, ammonium sulfate, diammonium phosphate (“DAP”), monoammonium phosphate (“MAP”), potash, and urea, which are each a hazardous chemical, as defined in 40 C.F.R. § 370.66.

15. During calendar year 2012, at the Syracuse and/or the Versailles facilities, Respondent stored ammonium nitrate, ammonium sulfate, DAP, MAP, potash and urea in quantities that exceeded the minimum threshold levels, as specified in 40 C.F.R. § 370.10.

16. At all relevant times during 2012, Respondent was required, pursuant to OSHA, to prepare or have available MSDSs for ammonium nitrate, ammonium sulfate, DAP, MAP, potash, and/or urea stored onsite at both the Syracuse and Versailles facilities.

17. The potential risks of the hazardous chemicals stored by Respondent during 2012 at the Syracuse and Versailles facilities include explosiveness (ammonium nitrate, ammonium sulfate), toxic and irritating fumes when burned (DAP and MAP), reactivity to water and corrosivity and toxicity (potash), and reactivity that can produce potentially explosive and toxic gases (urea) (See “CAMEO Chemical Database of Hazardous Materials,” at <https://response.restoration.noaa.gov/cameochemicals>).

18. Respondent did not file Tier II reports required for ammonium nitrate, ammonium sulfate, DAP, MAP, potash, and urea stored during calendar year 2012 at the Syracuse facility by March 1 of the following year (March 1, 2013).

19. Respondent did not file Tier II reports required for ammonium nitrate, ammonium sulfate, DAP, potash, and urea stored during calendar year 2012 at the Versailles facility by March 1 of the following year (March 1, 2013).

Count 1:
Violations of Tier II Reporting Requirements of Section 312 of EPCRA
At Respondent's Syracuse facility

20. The facts stated in paragraphs 1 through 19, above, are hereby incorporated by reference.

Ammonium Nitrate

21. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for ammonium nitrate stored at the Syracuse facility in 2012, is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Ammonium Sulfate

22. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for ammonium sulfate stored at the Syracuse facility in 2012 is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Diammonium phosphate ("DAP")

23. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for diammonium phosphate ("DAP") stored at the Syracuse facility in 2012 is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Monoammonium phosphate ("MAP")

24. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for Monoammonium phosphate ("MAP") stored at the Syracuse facility in 2012 is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Potash

25. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for Potash stored at the Syracuse facility in 2012 is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Urea

26. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for Urea stored at the Syracuse facility in 2012 is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Proposed Penalty

27. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and based upon the facts stated in Paragraphs 1 through 26, above, it is proposed that a civil penalty of up to the

maximum administrative penalty, but no less than \$32,500, be assessed against Respondent for the cited violations of Section 312 of EPCRA at the Syracuse facility for the calendar year 2012 reporting period.

Count II:
Violations of Tier II Reporting Requirements of Section 312 of EPCRA
At Respondent's Versailles facility

28. The facts stated in paragraphs 1 through 19, above, are hereby incorporated by reference.

Ammonium Nitrate

29. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for ammonium nitrate stored at the Versailles facility in 2012, is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Ammonium Sulfate

30. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for ammonium sulfate stored at the Versailles facility in 2012 is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Diammonium phosphate ("DAP")

31. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for diammonium phosphate ("DAP") stored at the Versailles facility in 2012 is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Potash

32. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for Potash stored at the Versailles facility in 2012 is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Urea

33. Respondent Loganbill Fertilizer's failure to comply with the EPCRA Tier II reporting requirements for Urea stored at the Syracuse facility in 2012 is a violation of Section 312(a) of EPCRA and of 40 C.F.R. §§ 370.40 and 370.42-45.

Proposed Penalty

34. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and based upon the facts stated in Paragraphs 1 through 19, above, it is proposed that a civil penalty of up to the maximum administrative penalty, but no less than \$32,500, be assessed against Respondent for the violations of Section 312 of EPCRA at the Versailles facility for the calendar year 2012

reporting period.

Relief

35. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalty Inflation Adjustment Act of 2015, as well as implementing regulations at 40 C.F.R. Part 19, authorize the United States to assess civil administrative penalties of up to \$37,500 per day for violations that occurred between January 12, 2009, and November 2, 2015, and up to \$54,789 per day for violations that occurred after November 2, 2015. For purposes of determining the amount of a civil penalty to be assessed, Section 325(b) of EPCRA states EPA shall consider “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 other matters as justice may require.” Complainant took into account the particular facts and circumstances of this case, the statutory penalty factors set forth in Section 325 of EPCRA, and EPA’s *Enforcement Response Policy: EPCRA Sections 304, 311, 312, and CERCLA Section 103 (ERP)*. The ERP sets forth a general penalty assessment policy for violations of Section 312 of EPCRA, including violations of the Tier II reporting requirements. The ERP provides a rational, consistent and equitable approach for applying the statutory penalty factors to particular cases.

36. Pursuant to Section 325(b)(1)(C) of the EPCRA, 42 U.S.C. § 11045(b)(1)(C), and based on the foregoing Finding of Violations, EPA, Region 7 hereby proposes to issue a Final Order Assessing an Administrative Penalty against the Respondent for the violations cited above, in an amount not less than \$65,000 based on Respondent’s failure to comply with the Tier II reporting requirements of Section 312 of EPCRA for a combined 11 chemicals at the Syracuse and Versailles facilities. In satisfaction of 40 C.F.R. § 22.14(a)(4)(ii), the severity of these violations, as considered by Complainant in proposing the penalty, includes, but is not limited to, the potential risks to the adjacent communities and emergency responders from Respondent’s failure to provide the required “Tier II” information.

37. The proposed penalty as set forth in this Complaint is 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 bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

38. 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. Payment of the minimum requested penalty, \$65,000, may be made by certified or cashier's check payable to “Treasurer, United States of America” and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

The check should reference the name and docket number of the Complaint. In the event that Respondents chooses not resolve this matter by payment of the minimum requested penalty amount, Complainant reserves the right to seek the full statutory penalties authorized by Section 325(c) of EPCRA at any hearing on this matter.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

39. If Respondent pays the proposed penalty within thirty (30) days after receiving the Complaint, then no Answer need be filed.

40. 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 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.

41. Respondent may request a hearing to contest any material fact contained in the 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.

42. To avoid being found in default, which constitutes an admission of all facts alleged in the 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.

43. 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
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

44. 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 penalty proposed shall be ordered unless the penalty is clearly inconsistent with the record of the proceeding or the Clean Air Act.

Informal Settlement Conference

45. 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:

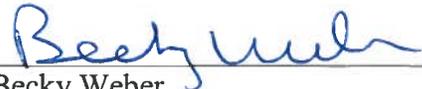
Howard Bunch
Sr. Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Telephone (913) 551-7879.

46. 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.

47. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility 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.

48. 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 penalty proposed above may be assessed by the entry of a Default Order.

Date 1/26/18


Becky Weber
Director
Air and Waste Management Division


Howard Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

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 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; a copy of the 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 to the following registered agents for Loganbill Fertilizer, Inc.:

Debra L. Loganbill
12366 Highway E
Versailles, Missouri 65084

1/29/18
Date



Enclosures: Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits