



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	)	EPA Docket No.: CERC-03-2008-0381
	)	EPA Docket No.: EPCRA-03-2008-0381
Knouse Foods Cooperative, Inc.)	
800 Peach Glen-Idaville Road)	
Peach Glen, Pennsylvania)	
17375,)	
)	
Respondent.	)	Administrative Complaint and Notice of
	)	Opportunity for a Hearing filed under Sections
	)	103 and 109 of the Comprehensive
Knouse Foods Cooperative, Inc.	)	Environmental Response, Compensation, and
800 Peach Glen-Idaville Road	)	Liability Act, as amended, 42 U.S.C. §§ 9603,
Peach Glen, Pennsylvania	)	9609, and Sections 304, 311, 312 and 325 of the
17375,	)	Emergency Planning and Community
	)	Right-to-Know Act of 1986, 42 U.S.C. §§ 11004,
Facility.	)	11021, 11022, 11045
)	
)	

ADMINISTRATIVE COMPLAINT

This Administrative Complaint and Notice of Opportunity for a Hearing (hereinafter "Complaint") is issued pursuant to the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, delegated to the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Executive Order No. 12580, January 23, 1987, 52 Fed. Reg. 2923, further delegated to the Regional Administrators by EPA Delegation No. 14-31, and redelegated to Complainant by EPA Region III Delegation No. 14-31. This Complaint is also being filed pursuant to the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, delegated to the Regional Administrators by EPA Delegation No. 22-3-A, and redelegated to Complainant by EPA Region III Delegation No. 22-3-A. Further, this Complaint is being filed pursuant to 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 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint as Attachment A. The Complainant is the Director of the Hazardous Site Cleanup Division for EPA Region III.

The Respondent is Knouse Foods Cooperative, Inc. (“Respondent” or “Knouse”). Respondent is hereby notified of EPA’s determination that Respondent has violated the requirements and prohibitions of Section 103 of CERCLA, 42 U.S.C. § 9603, Sections 304, 311, and 312 of EPCRA, 42 U.S.C. §§ 11004, 11021, 11022, and their respective implementing regulations, 40 C.F.R. Parts 302, 355, and 370. In support of its Complaint, Complainant alleges the following:

GENERAL ALLEGATIONS

1. Respondent is a Pennsylvania corporation, with its principal place of business located at 800 Peach Glen-Idaville Road in Peach Glen, Pennsylvania.

2. As a corporation, Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3, 355.20, and 370.2.

3. Beginning on or about March 15, 1949, and at all times relevant to this Complaint, Respondent was in charge of, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the Knouse facility located at 800 Peach Glen-Idaville Road in Peach Glen, Pennsylvania (“Peach Glen facility” or “Facility”).

4. Beginning on or about March 15, 1949, and at all times relevant to this Complaint, Respondent has owned and operated the Peach Glen facility, within the meaning of Sections 304, 311 and 312 of EPCRA, 42 U.S.C. §§ 11004, 11021, 11022.

5. The Peach Glen facility is a “facility,” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and their respective regulations, 40 C.F.R. §§ 302.3, 355.20, and 370.2.

6. Hazardous chemicals, including ammonia, Chemical Abstracts Service (“CAS”) No. 7664-41-7, were stored and used at the Peach Glen facility at all times relevant to this Complaint.

7. On June 6, 2007, EPA conducted an inspection of the Peach Glen facility to determine Respondent’s compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of EPCRA, 42 U.S.C. §§ 11002-11022.

8. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), (“Reportable Quantity” or “RQ”). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

9. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS, the release of which shall be required to be reported under Section 304(a), (b) and (c) of EPCRA, 42 U.S.C. §§ 11004(a), (b) and (c) (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

10. The State Emergency Response Commission (“SERC”) for the Peach Glen facility is, and has been at all times relevant to this Complaint, the Pennsylvania Emergency Management Agency (“PEMA”), located at 2605 Interstate Drive in Harrisburg, Pennsylvania 17120. The SERC has designated the Bureau of PENNSAFE, Pennsylvania Department of Labor and Industry, as the recipient of submissions pursuant to Sections 311 and 312 of EPCRA in the Commonwealth of Pennsylvania. The Bureau is located at 155-E Labor and Industry Building, Seventh and Forster Streets in Harrisburg, Pennsylvania 17120.

11. The Local Emergency Planning Committee (“LEPC”) for the Peach Glen facility is, and has been at all times relevant to this Complaint, the Adams County Department of Emergency Services, located at 230 Greenmyer Lane in Gettysburg, Pennsylvania 17325.

12. The local fire department for the Peach Glen facility is, and has been at all times relevant to this Complaint, the Bendersville Community Fire Company, located at P.O. Box 254, 119 Park Street in Bendersville, Pennsylvania 17306.

COUNT I - VIOLATION OF SECTION 103 OF CERCLA –
SEPTEMBER 21, 2006 AMMONIA RELEASE

13. The allegations contained in paragraphs 1 through 12 of this Complaint are incorporated by reference herein as though fully set forth at length.

14. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility, to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

15. Beginning on or about September 21, 2006, at or about 9:15 a.m., approximately 981 pounds of ammonia were released from the Peach Glen facility (the “Release”).

16. Ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

17. The Release constitutes a “release,” as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and 40 C.F.R. § 302.3, of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

18. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

19. Upon information and belief, Respondent had or should have had knowledge of the Release at 10:15 a.m. on September 21, 2006.

20. Respondent did not notify the NRC of the Release until or about 1:51 p.m. on September 21, 2006, more than 3 hours after the Respondent knew or should have known that a release of a hazardous substance had occurred from the Peach Glen facility in a quantity equal to or greater than its RQ.

21. Respondent failed to notify the NRC of the Release, as soon as the Respondent had knowledge of the Release, as required by Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

22. Respondent’s failure to immediately notify the NRC of the Release as soon as Respondent had knowledge of the Release, is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**COUNT II - VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC –
SEPTEMBER 21, 2006 AMMONIA RELEASE**

23. The allegations contained in paragraphs 1 through 22 of this Complaint are incorporated by reference herein as though fully set forth at length.

24. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. § 355.40(b)(1) and (2), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to notify the SERC and the LEPC immediately following a release of an EHS in a quantity equal to or greater than the RQ for the EHS, if that release requires notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

25. Ammonia is an EHS as defined by Section 329 of EPCRA, 42 U.S.C. § 11049, and 40 C.F.R. § 355.20, with an RQ of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.

26. The Release constitutes a release of an EHS, in a quantity equal to, or greater than, its RQ, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and consequently requiring immediate notification of the SERC and the LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. § 355.40(b)(1) and (2).

27. Respondent did not notify the SERC of the Release until or about 2:00 p.m. on September 21, 2006, more than 3 hours after Respondent gained knowledge or should have gained knowledge that a release of an EHS had occurred from the Facility in an amount equal to or greater than its RQ.

28. Respondent did not immediately notify the SERC of the occurrence of the Release as soon as the Respondent had knowledge or should have had knowledge of the Release, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. § 355.40(b)(1) and (2).

29. Respondent's failure to notify the SERC immediately following the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT III - VIOLATION OF SECTION 304(c) OF EPCRA – SERC–
SEPTEMBER 21, 2006 AMMONIA RELEASE**

30. The allegations contained in paragraphs 1 through 29 of this Complaint are incorporated by reference herein as though fully set forth at length.

31. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. § 355.40(b)(3), requires, in relevant part, that when there has been a release of an EHS in a quantity equal to or greater than its RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the SERC and the LEPC, as soon as practicable.

32. The Release constitutes a release of an EHS in a quantity equal to, or greater than, its RQ, requiring immediate notification of the SERC and LEPC pursuant to Sections 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. § 355.40(b)(1) and (2), and, consequently, requiring submission of written follow-up reports to the SERC and LEPC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b)(3).

33. Respondent did not provide a written follow-up report regarding the Release to the SERC.

34. Respondent did not provide a written follow-up report regarding the Release to the SERC as soon as practicable after Respondent had knowledge of the release, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b)(3).

35. Respondent's failure to provide a written follow-up report regarding the Release to the SERC, as soon as practicable, is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT IV - VIOLATION OF SECTION 304(c) OF EPCRA – LEPC–
SEPTEMBER 21, 2006 AMMONIA RELEASE**

36. The allegations contained in paragraphs 1 through 35 of this Complaint are incorporated by reference herein as though fully set forth at length.

37. Respondent did not provide a written follow-up report regarding the Release to the LEPC until or about October 31, 2006.

38. Respondent did not provide a written follow-up report regarding the Release to the LEPC as soon as practicable after Respondent had knowledge of the release, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b)(3).

39. Respondent's failure to provide a written follow-up report regarding the Release to the LEPC, as soon as practicable, is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT V - VIOLATION OF SECTION 311 OF EPCRA – SERC

40. The allegations contained in paragraphs 1 through 39 of this Complaint are incorporated by reference herein as though fully set forth at length.

41. Section 311 of EPCRA, 42 U.S.C. § 11021, as implemented by 40 C.F.R. Part 370, requires an owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical in accordance with the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. § 651 et seq., and 29 C.F.R. § 1910.1200, and at which facility is present at any one time a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) in a quantity equal to or greater than its applicable minimum threshold for reporting ("MTL") or threshold planning quantity ("TPQ") established by 40 C.F.R. § 370.20(b), to submit, either MSDSs for, or a list identifying, those hazardous chemicals to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility, on or before October 17, 1990, or within three months after meeting the MTL or TPQ.

42. Sulfuric acid, CAS No. 7664-93-9, is a component of a lead-acid battery.
43. Sulfuric acid is a “hazardous chemical” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), 40 C.F.R. § 370.2, and 29 C.F.R. § 1910.1200(c).
44. Sulfuric acid is an “extremely hazardous substance” as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 370.2, and listed at 40 C.F.R. Part 355, Appendices A and B.
45. Pursuant to 40 C.F.R. § 370.20(b)(1), the MTL for sulfuric acid is 500 pounds.
46. Pursuant to 40 C.F.R. § 370.28(c), if the total quantity of an EHS present as a component in a mixture plus all other quantities of that EHS present at the facility exceeds its MTL, the owner or operator of the facility may report either the total quantity of the mixture or the EHS component of the mixture.
47. Calcium hydroxide, CAS No. 1305-62-0, is a “hazardous chemical” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), 40 C.F.R. § 370.2, and 29 C.F.R. § 1910.1200(c).
48. Pursuant to 40 C.F.R. § 370.20(b)(4), the MTL for calcium hydroxide is 10,000 pounds.
49. At all times relevant to this Complaint, Respondent was a person engaged in a business where chemicals were used, distributed, or produced for use or distribution.
50. At all times relevant to this Complaint, Respondent was an “employer” as that term is defined at 29 U.S.C. § 1910.1200(c).
51. At all times relevant to this Complaint, Respondent was required to have MSDSs at its Peach Glen facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).
52. At all times relevant to this Complaint, Respondent was the owner or operator of a facility that is required to prepare or have available MSDSs for hazardous chemicals under the OSHA Hazard Communication Standard, 29 U.S.C. § 651 et seq., and 29 C.F.R. § 1910.1200.
53. Since at least 2004, Respondent has had present at its Peach Glen facility sulfuric acid in lead-acid batteries in excess of 39,000 pounds.
54. Since at least 2004, Respondent has had present at its Peach Glen facility approximately 56,000 pounds of calcium hydroxide.

55. Respondent was required to submit to the SERC, LEPC, and local fire department either MSDSs for sulfuric acid/lead-acid batteries and calcium hydroxide, or a list of hazardous chemicals identifying sulfuric acid/lead-acid batteries and calcium hydroxide as being present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide, no later than three months after Respondent had sulfuric acid/lead-acid batteries and calcium hydroxide present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide.

56. Respondent did not submit to the SERC MSDSs for sulfuric acid/lead-acid batteries and calcium hydroxide, or a list of hazardous chemicals identifying sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide within three months after Respondent had sulfuric acid/lead-acid batteries and calcium hydroxide present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide.

57. Respondent's failure to submit to the SERC either an MSDS for sulfuric acid/lead-acid batteries and calcium hydroxide, or a list of hazardous chemicals identifying sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide within three months after Respondent had sulfuric acid/lead-acid batteries and calcium hydroxide present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT VI - VIOLATION OF SECTION 311 OF EPCRA – LEPC

58. The allegations contained in paragraphs 1 through 57 of this Complaint are incorporated by reference herein as though fully set forth at length.

59. Respondent did not submit to the LEPC MSDSs for sulfuric acid/lead-acid batteries and calcium hydroxide, or a list of hazardous chemicals identifying sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide within three months after Respondent had sulfuric acid/lead-acid batteries and calcium hydroxide present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide.

60. Respondent's failure to submit to the LEPC either an MSDS for sulfuric acid/lead-acid batteries and calcium hydroxide, or a list of hazardous chemicals identifying sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide within three months after Respondent had sulfuric acid/lead-acid batteries and calcium hydroxide present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT VII - VIOLATION OF SECTION 311 OF EPCRA –
LOCAL FIRE DEPARTMENT**

61. The allegations contained in paragraphs 1 through 60 of this Complaint are incorporated by reference herein as though fully set forth at length.

62. Respondent did not submit to the local fire department MSDSs for sulfuric acid/lead-acid batteries and calcium hydroxide, or a list of hazardous chemicals identifying sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide within three months after Respondent had sulfuric acid/lead-acid batteries and calcium hydroxide present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide.

63. Respondent's failure to submit to the local fire department either an MSDS for sulfuric acid/lead-acid batteries and calcium hydroxide, or a list of hazardous chemicals identifying sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide within three months after Respondent had sulfuric acid/lead-acid batteries and calcium hydroxide present at the Peach Glen facility in quantities exceeding the respective MTLs for sulfuric acid and calcium hydroxide, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT VIII - VIOLATION OF SECTION 312 OF EPCRA –
CALENDAR YEAR 2006 – SERC**

64. The allegations contained in paragraphs 1 through 63 of this Complaint are incorporated by reference herein as though fully set forth at length.

65. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available an MSDS for a hazardous chemical in accordance with the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 et seq., and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable MTL or TPQ, to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form") identifying the hazardous chemical and providing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

66. During calendar year 2006, Respondent had present at its Peach Glen facility more than 46,000 pounds of sulfuric acid in lead-acid batteries.

67. The quantity of sulfuric acid in lead-acid batteries that Respondent had present at its Peach Glen facility during calendar year 2006 exceeded the 500 pound MTL for sulfuric acid.

68. During calendar year 2006, Respondent had present at its Peach Glen facility approximately 56,000 pounds of calcium hydroxide.

69. The quantity of calcium hydroxide that Respondent had present at its Peach Glen facility during calendar year 2006 exceeded the 10,000 pound MTL for calcium hydroxide.

70. By March 1, 2007, Respondent was required to submit to the SERC, LEPC, and local fire department Chemical Inventory Forms identifying sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility during calendar year 2006 in quantities greater than the respective MTLs for sulfuric acid and calcium hydroxide, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about those chemicals.

71. On or about February 27, 2007, Respondent submitted a Chemical Inventory Form to the SERC that failed to list sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility in quantities greater than the respective MTLs for sulfuric acid and calcium hydroxide during calendar year 2006.

72. Respondent failed to submit to the SERC by March 1, 2007, a complete and accurate Chemical Inventory Form for the Peach Glen facility for calendar year 2006.

73. Respondent's failure to submit to the SERC by March 1, 2007, a complete and accurate Chemical Inventory Form for the Peach Glen facility for calendar year 2006, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT IX - VIOLATION OF SECTION 312 OF EPCRA –
CALENDAR YEAR 2006 – LEPC**

74. The allegations contained in paragraphs 1 through 73 of this Complaint are incorporated by reference herein as though fully set forth at length.

75. On or about February 27, 2007, Respondent submitted a Chemical Inventory Form to the LEPC that failed to list sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility in quantities greater than the respective MTLs for sulfuric acid and calcium hydroxide during calendar year 2006.

76. Respondent failed to submit to the LEPC by March 1, 2007, a complete and accurate Chemical Inventory Form for the Peach Glen facility for calendar year 2006.

77. Respondent's failure to submit to the LEPC by March 1, 2007, a complete and accurate Chemical Inventory Form for the Peach Glen facility for calendar year 2006, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT X - VIOLATION OF SECTION 312 OF EPCRA –
CALENDAR YEAR 2006 – LOCAL FIRE DEPARTMENT**

78. The allegations contained in paragraphs 1 through 77 of this Complaint are incorporated by reference herein as though fully set forth at length.

79. On or about February 27, 2007, Respondent submitted a Chemical Inventory Form to the local fire department that failed to list sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility in quantities greater than the respective MTLs for sulfuric acid and calcium hydroxide during calendar year 2006.

80. Respondent failed to submit to the local fire department by March 1, 2007, a complete and accurate Chemical Inventory Form for the Peach Glen facility for calendar year 2006.

81. Respondent's failure to submit to the local fire department by March 1, 2007, a complete and accurate Chemical Inventory Form for the Peach Glen facility for calendar year 2006, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT XI - VIOLATION OF SECTION 312 OF EPCRA –
CALENDAR YEAR 2005**

82. The allegations contained in paragraphs 1 through 81 of this Complaint are incorporated by reference herein as though fully set forth at length.

83. During calendar year 2005, Respondent had present at its Peach Glen facility more than 41,000 pounds of sulfuric acid in lead-acid batteries.

84. The quantity of sulfuric acid in lead-acid batteries that Respondent had present at its Peach Glen facility during calendar year 2005 exceeds the 500 pound MTL for sulfuric acid.

85. During calendar year 2005, Respondent had present at its Peach Glen facility approximately 56,000 pounds of calcium hydroxide.

86. The quantity of calcium hydroxide that Respondent had present at its Peach Glen facility during calendar year 2005 exceeded the 10,000 pound MTL for calcium hydroxide.

87. By March 1, 2006, Respondent was required to submit to the SERC, LEPC, and local fire department Chemical Inventory Forms identifying sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility during calendar year 2005 in quantities greater than the respective MTLs for sulfuric acid and lead-acid batteries, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about those chemicals.

88. On or about February 22, 2006, Respondent submitted Chemical Inventory Forms to the SERC, LEPC, and local fire department, that failed to list sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility in quantities greater than the respective MTLs for sulfuric acid and calcium hydroxide during calendar year 2005.

89. Respondent failed to submit to the SERC, LEPC, and local fire department by March 1, 2006, complete and accurate Chemical Inventory Forms for the Peach Glen facility for calendar year 2005.

90. Respondent's failure to submit to the SERC, LEPC, and local fire department by March 1, 2006, complete and accurate Chemical Inventory Forms for the Peach Glen facility for calendar year 2005, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT XII - VIOLATION OF SECTION 312 OF EPCRA –
CALENDAR YEAR 2004

91. The allegations contained in paragraphs 1 through 90 of this Complaint are incorporated by reference herein as though fully set forth at length.

92. During calendar year 2004, Respondent had present at its Peach Glen facility more than 39,000 pounds of sulfuric acid in lead-acid batteries.

93. The quantity of sulfuric acid in lead-acid batteries that Respondent had present at its Peach Glen facility during calendar year 2004 exceeds the 500 pound MTL for sulfuric acid.

94. During calendar year 2004, Respondent had present at its Peach Glen facility approximately 56,000 pounds of calcium hydroxide.

95. The quantity of calcium hydroxide that Respondent had present at its Peach Glen facility during calendar year 2004 exceeded the 10,000 pound MTL for calcium hydroxide.

96. By March 1, 2005, Respondent was required to submit to the SERC, LEPC, and local fire department Chemical Inventory Forms identifying sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility during calendar year 2004 in quantities greater than the respective MTLs for sulfuric acid and calcium hydroxide, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about those chemicals.

97. On or about February 21, 2005, Respondent submitted Chemical Inventory Forms to the SERC, LEPC, and local fire department, that failed to list sulfuric acid/lead-acid batteries as present at the Peach Glen facility in quantities greater than the respective MTLs for sulfuric acid and calcium hydroxide during calendar year 2004.

98. Respondent failed to submit to the SERC, LEPC, and local fire department by March 1, 2005, complete and accurate Chemical Inventory Forms for the Peach Glen facility for calendar year 2004.

99. Respondent's failure to submit to the SERC, LEPC, and local fire department by March 1, 2005, complete and accurate Chemical Inventory Forms for the Peach Glen facility for calendar year 2004, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

PROPOSED CERCLA AND EPCRA PENALTIES

PROPOSED CERCLA PENALTY

Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), authorizes EPA to assess a penalty not to exceed \$25,000.00 per violation of the notice requirements of Section 103 of CERCLA, 42 U.S.C. § 9603. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA") and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, (Feb. 13, 2004), codified at 40 C.F.R. Part 19, ("Penalty Inflation Rule"), copies of which are enclosed with this Complaint as Attachment B, violations of Section 103 of CERCLA that occur after March 15, 2004, are subject to a statutory maximum penalty of \$32,500.00 per violation. In the case of a second or subsequent violation, the amount of such penalty may not be more than \$97,500.00 for each day during which the violation continues.

Civil penalties under Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), may be assessed by Administrative Order and are to be assessed and collected in the same manner, and subject to the same provisions, as in the case of penalties assessed and collected after notice and opportunity for hearing on the record in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.

To develop the proposed penalty in this Complaint, Complainant has taken into account 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 matters as justice may require, with specific reference to EPA’s *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 (“ERP”)*, dated September 30, 1999, a copy of which is enclosed with this Complaint as Attachment C. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty authorities described above to particular cases.

On the basis of the violations of CERCLA described above, Complainant has determined that Respondent is subject to penalties for violations under Section 109(a) of CERCLA, 42 U.S.C. § 9609(a). Accordingly, Complainant proposes a civil penalty in the amount of **\$20,149.50** pursuant to the authority of Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), as set forth below. This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

<u>Count I:</u>	Failure to notify the NRC immediately following the September 21, 2006 Release of ammonia in a quantity equal to, or greater than, its RQ, in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6	Extent Level 1, Gravity Level B	\$20,149.50
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Base Penalty Calculation:

Nature of Violation - The violation by Respondent alleged in Count I of the Complaint addresses emergency response matters and concerns. Respondent’s violation had a deleterious effect upon the reporting system under CERCLA, which is intended and designed to enable federal, state, and local governmental entities to be able to respond properly to chemical releases at and from facilities in their communities. Respondent’s violation, therefore, poses a potential for harm not only to the CERCLA regulatory system, but also to the protection of the environment and human health.

Civil penalties under Section 325(b) and (c) of EPCRA, 42 U.S.C. § 11045(b) and (c), may be assessed by Administrative Order and are to be assessed and collected in the same manner, and subject to the same provisions, as in the case of penalties assessed and collected after notice and opportunity for hearing on the record in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.

To develop the penalty proposed in this Complaint, Complainant has taken into account the nature, circumstances, extent, and gravity of the 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 matters as justice may require, with specific reference to EPA's September 30, 1999 *ERP*. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty authorities described above to particular cases.

On the basis of the violations of EPCRA described above, Complainant has determined that Respondent is subject to penalties for violations of Sections 304(a) and (b), 304(c), 311, and 312 of EPCRA, 42 U.S.C. §§ 11004(a) and (b), 11004(c), 11021, 11022. Accordingly, Complainant proposes a civil penalty in the amount of **\$116,650.50** pursuant to the authority of Section 325 of EPCRA, 42 U.S.C. § 11045, as set forth below. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

- | | | |
|--------------------------|---|--------------------|
| <u>Count II:</u> | Failure to notify the SERC immediately following the September 21, 2006 Release of ammonia in a quantity equal to, or greater than, its RQ, in violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. § 355.40(b)(1) and (2)
Extent Level 1, Gravity Level B | \$20,149.50 |
| <u>Count III:</u> | Failure to provide a written follow-up report to the SERC as soon as practicable after the September 21, 2006 Release of ammonia in a quantity equal to, or greater than, its RQ, in violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b)(3)
Extent Level 1, Gravity Level B | \$20,149.50 |
| <u>Count IV:</u> | Failure to provide a written follow-up report to the LEPC as soon as practicable after the September 21, 2006 Release of ammonia in a quantity equal to, or greater than, its RQ, in violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b)(3)
Extent Level 1, Gravity Level B | \$20,149.50 |

- Count VI:** Failure to submit to the LEPC MSDSs for, or a list containing, sulfuric acid/lead-acid batteries and calcium hydroxide, within three months after having sulfuric acid and calcium hydroxide present at the Peach Glen facility in quantities exceeding their respective MTLs, in violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and 40 C.F.R. § 370.21
Extent Level 1, Gravity Level A **\$9,673.00**
- Count VII:** Failure to submit to the local fire department MSDSs for, or a list containing, sulfuric acid/lead-acid batteries and calcium hydroxide, within three months after having sulfuric acid and calcium hydroxide present at the Peach Glen facility in quantities exceeding their respective MTLs, in violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and 40 C.F.R. § 370.21
Extent Level 1, Gravity Level A **\$9,673.00**
- Count VIII:** Failure to submit to the SERC, by March 1, 2007, complete and accurate Chemical Inventory Forms providing information about hazardous chemicals stored at the Peach Glen facility during calendar year 2006, in quantities greater than their MTLs, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25
Extent Level 1, Gravity Level C **\$8,061.00**
- Count IX:** Failure to submit to the LEPC, by March 1, 2007, complete and accurate Chemical Inventory Forms providing information about hazardous chemicals stored at the Peach Glen facility during calendar year 2006, in quantities greater than their MTLs, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25
Extent Level 1, Gravity Level C **\$8,061.00**
- Count X:** Failure to submit to the local fire department, by March 1, 2007, complete and accurate Chemical Inventory Forms providing information about hazardous chemicals stored at the Peach Glen facility during calendar year 2006, in quantities greater than their MTLs, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25
Extent Level 1, Gravity Level C **\$8,061.00**

Base Penalty Calculation:

Nature of Violation - The violations by Respondent alleged in Counts V through X of the Complaint addresses emergency preparedness and community right-to-know matters and concerns. Respondent's violations had a deleterious effect upon the reporting system under EPCRA, which is intended and designed to enable federal, state, and local governmental entities to properly plan for chemical releases at and from facilities in their communities, and provide the public the ability to access information concerning hazardous chemicals and EHSs that are stored or otherwise present in the community. Respondent's violations, therefore, pose a potential not only for harm to the EPCRA regulatory system, but also to the protection of the environment and human health.

Extent Level - The Extent Level for Respondent's violations as alleged in Counts V through VII of the Complaint is Level 1 due to Respondent's failure to submit to the SERC, LEPC, and local fire department an MSDS for, or a list identifying, sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Peach Glen facility, for more than 30 days after such MSDS or list was due. The Extent Level for Respondent's violations as alleged in Counts VIII through X of the Complaint is also Level 1 due to Respondent's failure to submit to the SERC, LEPC, and local fire department by March 1, 2007, complete and accurate Chemical Inventory Forms for calendar year 2006.

Gravity Level - The Gravity Level for Respondent's violations as alleged in Counts V through VII of the Complaint is Level A due to the fact that the quantity of sulfuric acid/lead-acid batteries (more than 39,000 pounds) Respondent had present at one time at the Peach Glen facility during calendar years 2004 through 2006, was greater than 10 times its threshold of 500 pounds. The Gravity Level for Respondent's violations as alleged in Counts VIII through X of the Complaint is Level C due to the fact that the number of chemicals Respondent failed to include in its Chemical Inventory Form was between 1 and 5. As a result, a Gravity Level of A for Counts V through VII, and a Gravity Level of C for Counts VIII through X, incorporate and take into account the nature and extent of harm posed by Respondent's violations concerning chemical reporting.

Base Penalty Total - In light of the adjustments to penalties instituted by the DCIA and Penalty Inflation Rule and the fact that the allegations of Counts V through X of the Complaint address violations by Respondent which occurred after March 15, 2004, an Extent Level of I and Gravity Level of A for Respondent's violations as alleged in Counts V through VII of the Complaint, and an Extent Level of I and Gravity Level of C for Respondent's violations as alleged in Counts VIII through X of the Complaint, results in a Base Penalty of \$53,202.00.

Multi-Day Penalty: In light of the facts of the action at bar, EPA in its enforcement discretion is not seeking imposition of a multi-day penalty against Respondent for the violations alleged in Counts V through X of the Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Within 30 days of receipt of this Complaint, Respondent may request a hearing before an EPA Administrative Law Judge on the Complaint. At the hearing, Respondent may contest any material fact as well as the appropriateness of any penalty amount. To request a hearing, Respondent must file a written Answer within 30 days of receipt of this Complaint. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement will be deemed to be a denial of the allegation. The Answer should also contain: the circumstances or arguments that are alleged to constitute the grounds of any defense; the facts that Respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure by Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of that allegation.

If Respondent fails to file a written Answer within 30 days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to file an Answer could result in the filing of a Motion for Default and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondent shall be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is provided as Attachment A. Respondent must send any request for a hearing to:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to Allison F. Gardner, Assistant Regional Counsel, the attorney assigned to represent EPA in this matter, at:

Allison F. Gardner (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Respondent's rights to appeal an Order assessing a CERCLA penalty are set forth in 40 C.F.R. §§ 22.30 and 22.39(b), and in Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), which provides in relevant part that:

Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President.

Respondent's rights to appeal an Order assessing an EPCRA penalty are set forth in 40 C.F.R. § 22.30, and in Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1), which provides in relevant part that:

Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator.

QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If Respondent pays the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint, stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to Allison F. Gardner (3RC42), Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

In accordance with 40 C.F.R. § 22.18(a)(3), upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations and to appeal the final order.

Payment of the CERCLA penalty shall be made by sending a cashier's check made payable to the "EPA Hazardous Substances Superfund," in care of:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Payment of the EPCRA penalty shall be made by sending a cashier's check made payable to the "Treasurer of the United States of America," in care of:

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

The checks should reference the name and docket numbers of this Complaint. At the same time payment is made, copies of the checks shall be mailed to: Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Allison F. Gardner (3RC42), Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please write to or telephone:

Allison F. Gardner (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2631

Please note that a request for, the scheduling of, or the participation in, an informal settlement conference does not extend the 30-day period during which a written Answer and Request for Hearing must be submitted as set forth above. The informal settlement conference procedure, however, may be pursued simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties against whom a civil penalty is proposed to pursue settlement through an informal conference. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties and incorporated into a final Order signed by the Regional Administrator or his designee. SETTLEMENT CONFERENCES SHALL NOT AFFECT THE REQUIREMENT TO FILE A TIMELY ANSWER TO THE COMPLAINT.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: The Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer shall have any ex parte communication with the EPA trial staff or the Respondent on the merits of any issues involved in this proceeding. Please be advised that the Consolidated Rules prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator or Regional Judicial Officer, after issuance of a Complaint.

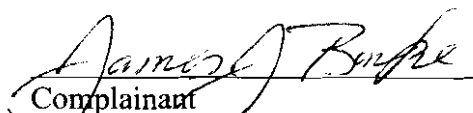
ATTACHMENTS

- A. 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 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22
- B. Debt Collection Improvement Act of 1996 ("DCIA") and subsequent Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, (Feb. 13, 2004), 40 C.F.R. Part 19 ("Penalty Inflation Rule")
- C. Enforcement Response Policy for Section 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 ("ERP"), dated September 30, 1999
- D. Detailed Summary of CERCLA and EPCRA Proposed Penalties

GENERAL PROVISIONS

Issuance of this Complaint shall not constitute or be construed as a waiver by EPA of its rights against Respondent, including, but not limited to, the right to expend and recover funds under CERCLA, to bring enforcement actions under Section 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6973, to address releases including those identified in this Complaint, and to require further action as necessary to respond to the release addressed in this Complaint.

7/23/08
DATE


Complainant
James J. Burke, Director
Hazardous Site Cleanup Division

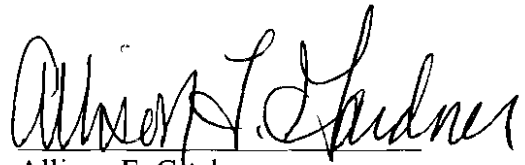
In the Matter of:	)	EPA Docket No.: CERC-03-2008-0381
	)	EPA Docket No.: EPCRA-03-2008-0381
Knouse Foods Cooperative, Inc.)	
800 Peach Glen-Idaville Road)	
Peach Glen, Pennsylvania)	
17375,)	
)	
Respondent.	)	Administrative Complaint and Notice of
	)	Opportunity for a Hearing filed under Sections
	)	103 and 109 of the Comprehensive
Knouse Foods Cooperative, Inc.	)	Environmental Response, Compensation, and
800 Peach Glen-Idaville Road	)	Liability Act, as amended, 42 U.S.C. §§ 9603,
Peach Glen, Pennsylvania	)	9609, and Sections 304, 311, 312 and 325 of the
17375,	)	Emergency Planning and Community
	)	Right-to-Know Act of 1986, 42 U.S.C. §§ 11004,
Facility.	)	11021, 11022, 11045
)	
)	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant United States Environmental Protection Agency's Administrative Complaint and Notice of Opportunity for a Hearing, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Administrative Complaint and Notice of Opportunity for a Hearing, along with its enclosures and/or attachments, were sent by certified mail, return receipt requested, to:

Mr. Kenneth E. Guise
 President & Chief Executive Officer
 Knouse Foods Cooperative, Inc.
 800 Peach Glen-Idaville Road
 Peach Glen, Pennsylvania 17375

7/23/08
 DATE


 Allison F. Gardner
 Assistant Regional Counsel
 Counsel for Complainant
 (215) 814-2631