



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

COPY

SEP 21 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Larry O. Donald, Member
CWM Chemical Services, LLC
1550 Balmer Rd.
Model City, NY 14107-0200

Re: In the Matter of **CWM CHEMICAL SERVICES, LLC**
Docket No. EPCRA-02-2010-4206

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2010 SEP 23 A 9 55
REGIONAL HEARING
CLERK

Dear Mr. Donald:

Enclosed is the Complaint and Notice of Opportunity For Hearing, and supporting documents in the above-referenced proceeding. This Complaint alleges violations of Title III, Emergency Planning and Community Right-To-Know Act ("EPCRA"), Section 313, and regulations promulgated pursuant to EPCRA set forth at 40 C.F.R. Part 372.

You have the right to a hearing to contest any of the allegations in the Complaint. If you admit any of the allegations, or any are found to be true after you have had an opportunity for a hearing on any of them, you have the right to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint to the Environmental Protection Agency's ("EPA") Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866


If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not substitute** for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

I have enclosed a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, which govern EPA civil administrative enforcement proceedings, a copy of the relevant EPA Enforcement Response Policy, a Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings, and a copy of the EPA Supplemental Environmental Projects (SEP) Policy for your consideration. The EPA encourages the use of SEPs, where appropriate, as part of a settlement agreement. Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Mr. Michael Mahar, District Manager
Ms. Jill Banaszak, TRI Technical Contact
Ms. Karen Maples, Regional Hearing Clerk (w/o enclosures)
Ms. Suzanne Wither
Division of Environmental Remediation
NYS Department of Environmental Conservation
625 Broadway - 11th Floor
Albany, New York 12233

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 11
2010 SEP 23 A 9:55
REGIONAL HEARING
CLERK

-----X
In the Matter of :
: **CWM CHEMICAL SERVICES, LLC,** :
: Respondent. :
: Proceeding under Section 325(c) :
of Title III of the Superfund :
Amendments and Reauthorization Act :
: :
-----X

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

Docket No. EPCRA-02-2010-4206

COMPLAINT

Complainant, as and for her Complaint against Respondent, hereby alleges:

1. This civil administrative action is instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act (42 U.S.C. § 11001 et seq.) which is also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA").
2. The Complainant, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency (hereinafter, "EPA"), Region 2, has been duly delegated the authority to institute this action.
3. Respondent is Chemical Waste Management (CWM) Chemical Services, LLC. Respondent maintains a facility that is the subject of this Complaint at 1550 Balmer Road, Model City, New York 14107-0200 (hereinafter, "Respondent's facility"). Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, respectively, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule (40 C.F.R. Part 372). Under Section 313 of EPCRA and 40 C.F.R. § 372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form R, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 and/or 40 C.F.R. § 372.28 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. The completed and correct Form R is required to be submitted

to the Regional Administrator of the EPA and to the State in which the subject facility is located.

4. As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. § 11023(f)(2)), and 40 C.F.R. § 372.27, owners or operators of a facility subject to the requirements of Section 313(b), with respect to the manufacture, process or otherwise use of a toxic chemical, may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. § 372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a Form R, therefore, may submit an Alternate Threshold Certification Statement or (Form A) (See 71 Fed. Reg. 76944; December 22, 2006) pursuant to 40 C.F.R. §372.27(b). Pursuant to 40 C.F.R. § 372.27(e)(3), EPA has excluded the Persistent Bioaccumulative Toxic Chemical (PBT) dioxin and dioxin-like compounds from eligibility for the Alternate Thresholds described in 40 C.F.R. § 372.27(a).

5. This Complaint serves notice that Complainant has reason to believe that Respondent failed to submit timely, complete and correct Toxic Chemical Release Inventory Reporting Form R reports as required by Section 313 of EPCRA (42 U.S.C. § 11023) and the Federal regulations that set out in greater detail the Section 313 reporting requirements codified at 40 C.F.R. Part 372.

6. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42U.S.C. § 11049(7)).

7. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)), and by 40 C.F.R. § 372.3.

8. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)), and by 40 C.F.R. § 372.3.

9. Respondent's facility has 10 or more "full time employees" as that term is defined by 40 C.F.R. § 372.3.

10. Respondent's facility is under North American Industry Classification System (NAICS) Code 562211.

11. Respondent's facility is subject to the requirements of EPCRA, Section 313(b) (42 U.S.C. § 11023(b)), and 40 C.F.R. § 372.22.

12. On or about October 21, 2008, authorized representatives of EPA conducted an inspection of Respondent's facility to determine whether Respondent was in compliance with the Toxic Chemical Release Reporting requirements (hereinafter, "the Inspection").

COUNT 1

13. Complainant realleges each allegation contained in Paragraphs "1" through "12" with the same force and effect as if fully set forth herein.

14. Pursuant to the Inspection, EPA representatives determined that during the 2005 calendar year Respondent "otherwise used" (as defined in 40 C.F.R. § 372.3) approximately 60,000 pounds of aluminum (fume or dust), Chemical Abstracts Service ("CAS") Registry Number 7429-90-5.

15. Aluminum (fume or dust) is listed under 40 C.F.R. § 372.65 and 40 C.F.R. § 372.28.

16. Respondent "otherwise used" aluminum (fume or dust) in quantities exceeding the established threshold of 10,000 pounds. [40 C.F.R. § 372.28].

17. Respondent was required to submit by July 1, 2006 a complete and correct Form R for aluminum (fume or dust) for the 2005 calendar year to EPA and to New York State.

18. Respondent failed to submit to EPA and to New York State, in a timely manner, a complete and correct Form R for aluminum (fume or dust) for 2005.

19. Respondent's failure to submit in a timely manner a complete and correct Form R for aluminum (fume or dust) constitutes a failure or refusal to comply with Section 313 of EPCRA (42 U.S.C. § 11023), and with 40 C.F.R. § 372.30.

COUNT 2

20. Complainant realleges each allegation contained in Paragraphs "1" through "12" with the same force and effect as if fully set forth herein.

21. Pursuant to the Inspection, EPA representatives determined that during the 2006 calendar year, Respondent "otherwise used" (as defined in 40 C.F.R. § 372.3) approximately 66,000 pounds of aluminum (fume or dust), Chemical Abstracts Service ("CAS") Registry Number 7429-90-5.

22. Aluminum (fume or dust) is listed under 40 C.F.R. § 372.65 and 40 C.F.R. § 372.28.

23. Respondent "otherwise used" aluminum (fume or dust) in quantities exceeding the

established threshold of 10,000 pounds. [40 C.F.R. § 372.28].

24. Respondent was required to submit by July 1, 2007 a complete and correct Form R for aluminum (fume or dust) for the 2006 calendar year to EPA and to New York State.

25. Respondent failed to submit to EPA and to New York State, in a timely manner, a complete and correct Form R for aluminum (fume or dust) for 2006.

26. Respondent's failure to submit in a timely manner a complete and correct Form R for aluminum (fume or dust) constitutes a failure or refusal to comply with Section 313 of EPCRA (42 U.S.C. § 11023), and with 40 C.F.R. § 372.30.

COUNT 3

27. Complainant realleges each allegation contained in Paragraphs "1" through "12" with the same force and effect as if fully set forth herein.

28. Pursuant to the Inspection, EPA representatives determined that during the 2007 calendar year, Respondent "otherwise used" (as defined in 40 C.F.R. § 372.3) approximately 61,000 pounds of aluminum (fume or dust), Chemical Abstracts Service ("CAS") Registry Number 7429-90-5.

29. Aluminum (fume or dust) is listed under 40 C.F.R. § 372.65 and 40 C.F.R. § 372.28.

30. Respondent "otherwise used" aluminum (fume or dust) in quantities exceeding the established threshold of 10,000 pounds. [40 C.F.R. § 372.28].

31. Respondent was required to submit by July 1, 2008 a complete and correct Form R for aluminum (fume or dust) for the 2007 calendar year to EPA and to New York State.

32. Respondent failed to submit to EPA and to New York State, in a timely manner, a complete and correct Form R for aluminum (fume or dust) for 2007.

33. Respondent's failure to submit in a timely manner a complete and correct Form R for aluminum (fume or dust) constitutes a failure or refusal to comply with Section 313 of EPCRA (42 U.S.C. § 11023), and with 40 C.F.R. § 372.30.

COUNT 4

34. Complainant realleges each allegation contained in Paragraphs "1" through "12" with the same force and effect as if fully set forth herein.

35. Pursuant to the Inspection, EPA representatives determined that during the 2008 calendar year, Respondent "otherwise used" (as defined in 40 C.F.R. § 372.3) approximately 63,100 pounds of aluminum (fume or dust), Chemical Abstracts Service ("CAS") Registry Number 7429-90-5.

36. Aluminum (fume or dust) is listed under 40 C.F.R. § 372.65 and 40 C.F.R. § 372.28.

37. Respondent "otherwise used" aluminum (fume or dust) in quantities exceeding the established threshold of 10,000 pounds. [40 C.F.R. § 372.28].

38. Respondent was required to submit by July 1, 2009 a complete and correct Form R for aluminum (fume or dust) for the 2008 calendar year to EPA and to New York State.

39. Respondent failed to submit to EPA and to New York State, in a timely manner, a complete and correct Form R for aluminum (fume or dust) for 2008.

40. Respondent's failure to submit in a timely manner a complete and correct Form R for aluminum (fume or dust) constitutes a failure or refusal to comply with Section 313 of EPCRA (42 U.S.C. § 11023), and with 40 C.F.R. § 372.30.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 325(c) of EPCRA (42 U.S.C. § 11045(c)), which authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA 42 U.S.C. §11023. Pursuant to the Debt Collection and Improvement Act (DCIA), the civil penalties have been increased and currently allow for a civil penalty of not more than \$37,500 per violation per day, 31 U.S.C. § 3701 et seq. (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to DCIA.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time, with specific reference to EPA's "Enforcement Response Policy for Section 313 of EPCRA" dated August 10, 1992, and amended on April 12, 2001, a copy of which is available upon request. This policy provides a rational, consistent and equitable calculation methodology for penalties in particular cases. In calculating a proposed penalty pursuant to this policy, EPA takes into account the gravity of the violations, as well as certain factors such as a violator's history of previous such violations and its ability to pay.

The Complainant proposes that, subject to receipt and evaluation of further relevant information, Respondent be assessed the following civil penalties for the violations alleged in the Complaint:

<u>COUNT 1</u> – Failure to submit a Toxic Chemical Release Inventory Reporting Form R for aluminum (fume or dust) for the 2005 Calendar Year	\$21,922
<u>COUNT 2</u> – Failure to submit a Toxic Chemical Release Inventory Reporting Form R for aluminum (fume or dust) for the 2006 Calendar Year	\$21,922
<u>COUNT 3</u> – Failure to submit a Toxic Chemical Release Inventory Reporting Form R for aluminum (fume or dust) for the 2007 Calendar Year	\$21,922
<u>COUNT 4</u> – Failure to submit a Toxic Chemical Release Inventory Reporting Form R for aluminum (fume or dust) for the 2008 Calendar Year	\$24,080
TOTAL PROPOSED PENALTY:	\$89,846
*ROUNDED:	\$89,800

*In accordance with Agency policies regarding modifications to the relevant penalty policies, the total gravity-based penalty amount is rounded to the nearest unit of 100 dollars.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, “Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Etc.”, and are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this “Complaint, and Notice of Opportunity for Hearing” (hereinafter referred to as the “Complaint”).

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint and such Answer must be filed within 30 days after service of a Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b) The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute, or that might constitute, the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c)

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. §22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act (5 U.S.C. §§ 551-59), and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. §22.15(d). If Respondent fails to file a timely Answer to the Complaint [i.e. in accordance with the period set forth in 40 C.F.R. § 22.15(a)] , Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). [40 C.F.R. § 22.17(d)] If necessary, EPA may then seek to enforce such Final Order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a Final Order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served." 40 C.F.R. §22.30 (a). Pursuant to 40 C.F.R. § 22.7(c), where service is affected by mail, "...5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a Final Order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. §22.18(b) At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Melva J. Hayden, Esquire
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway – 16th Floor
New York, New York 10007-1866

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. [40 C.F.R. § 22.18(b)(1)] Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. [40 C.F.R. § 22.18(b)(2)]. In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. [40 C.F.R. § 22.18(b)(2)]. In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. [40 C.F.R. § 22.18(b)(3)].

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may resolve this proceeding by paying the specific penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk, Region 2 (at the New York address noted, above), 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should also be provided to the EPA Assistant Regional Counsel contact identified on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

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

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing docket number EPCRA-02-2010-4206, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (2008), by Certified Mail, Return Receipt Requested, to Larry O. Donald, Member, Chemical Waste Management, LLC, 1550 Balmer Road, Model City, NY 14107-0200. I hand carried the original and one copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: SEP 23 2010

Mildred N. Bag
New York, New York