

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF
SAVAGE ARMS, INC.

100 Springdale Rd.
Westfield, MA 01085,

Respondent,

Docket No: EPCRA-01-2015-0056

Proceeding under Section 325(c) of
Title III of the Superfund Amendments and
Reauthorization Act, 42 U.S.C. § 11045(c).

ANSWER TO COMPLAINT AND REQUEST FOR HEARING

Respondent, SAVAGE ARMS, INC., by and through its attorneys, Seyfarth Shaw LLP,
requests a hearing in this matter, and for its Answer to Complaint, states as follows:

COMPLAINT ¶1:

Complainant, the United States Environmental Protection Agency, Region 1 ("EPA"), issues this administrative Complaint and Notice of Opportunity for Hearing to Savage Arms Inc. ("Savage" or "Respondent") under Section 313 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11023 (also known as the Emergency Planning and Community Right-to-Know Act or "EPCRA"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. This Complaint notifies Respondent that EPA intends to assess penalties for alleged violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and its implementing regulations at 40 C.F.R. Part 372, for the failure to [sic] toxic chemical release forms to the proper authorities by the required deadline. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

ANSWER:

Respondent admits Complainant purports to bring this action under the cited statutes, that Complainant purports to assess penalties for alleged violations under the cited statutes, and that Complainant describes Respondent's options related to the Complaint. Respondent denies it is

liable for a civil penalty pursuant to the cited statutes. Respondent denies the remaining allegations in Paragraph 1 of the Complaint.

I. STATUTORY AND REGULATORY BASIS

COMPLAINT ¶2:

In accordance with Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), owners or operators of a facility subject to the requirements of Section 313 must prepare and submit annually, no later than July 1 of each year, a toxic chemical release form (“TRI Form”) for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year at the facility in quantities exceeding the thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. Part 372. Under Section 313(a), each TRI form is required to be submitted to EPA and to the state in which the subject facility is located.

ANSWER:

The terms of the cited provisions of Section 313(a) of EPCRA stand on their own, and Respondent denies any allegation contained in Paragraph 2 of the Complaint inconsistent with those terms. Respondent denies that Paragraph 2 is an accurate quote of Section 313(a) of EPCRA or that Respondent violated the cited provisions and therefore denies the remaining allegations in Paragraph 2 of the Complaint.

COMPLAINT ¶3:

The regulations promulgated pursuant to Section 313 of EPCRA, 42 U.S.C. § 11023, are found at 40 C.F.R. Part 372.

ANSWER:

Respondent admits that 40 C.F.R. Part 372 purports to contain regulations promulgated pursuant to Section 313 of EPCRA.

COMPLAINT ¶4:

Forty [sic] C.F.R. § 372.22 provides that owners or operators of facilities that have 10 or more full-time employees; that are in the Standard Industrial Classification (“SIC”) codes or North American Industry Classification System (“NAICS”) codes specified in 40 C.F.R. §§ 372.22(b) and 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year are required by 40 C.F.R. § 372.30 to submit a Form R for each of these substances

for that year. The thresholds for reporting are found in 40 C.F.R. §§ 372.25 and 372.28. Unless otherwise specified under 40 C.F.R. § 372.28, generally the thresholds for reporting are 25,000 pounds for chemicals that are "manufactured" or "processed" and 10,000 pounds for chemicals that are "otherwise used." Pursuant to 40 C.F.R. § 372.27, if the amount manufactured, processed, or otherwise used is less than or equal to 1,000,000 pounds and the reportable amount is less than or equal to 500 pounds per year, the owner or operator is not required to submit the Form R for such chemical under § 372.30, but must instead submit a certification statement that contains the information required in 40 C.F.R. § 372.95 before July 1 of each year (commonly referred to as a "Form A"). This alternate option reporting option is not available for all chemicals. Hereinafter, Form As and Form R's collectively shall be referred to as "TRI Forms."

ANSWER:

The terms of the cited provisions of Section 40 C.F.R. Part 372 stand on their own, and Respondent denies any allegation contained in Paragraph 4 of the Complaint inconsistent with those terms. Respondent denies that Paragraph 4 is an accurate quote of the applicable sections of 40 C.F.R. Part 372 or that Respondent violated the cited regulations and therefore denies the remaining allegations in Paragraph 2 of the Complaint.

COMPLAINT ¶5:

Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provides for the assessment of civil penalties for violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), in amounts of up to \$37,500 per day for violations occurring after January 12, 2009.

ANSWER:

The terms of Section 325(c) of EPCRA and of the Debt Collection Improvement Act and its implementing regulations stand on their own, and Respondent denies any allegation contained in Paragraph 5 of the Complaint inconsistent with those terms.

II. GENERAL ALLEGATIONS

COMPLAINT ¶6:

Respondent is a corporation organized under the laws of the State of Massachusetts with a single place of business at 100 Springdale Rd., Westfield, Massachusetts ("Facility").

ANSWER:

Respondent admits that it is a corporation and that it has a place of business at 100 Springdale Rd., Westfield, Massachusetts. Respondent denies the remaining allegations in Paragraph 6 of the Complaint.

COMPLAINT ¶7:

Respondent processes chromium and uses lead and methanol to produce metal rifle components and assemble rifles with those components at the Facility.

ANSWER:

Respondent admits that chromium, lead, and methanol are components in its manufacturing process at the Facility. Respondent denies the remaining allegations in Paragraph 7 of the Complaint.

COMPLAINT ¶8:

Respondent owns the Facility.

ANSWER:

Admitted.

COMPLAINT ¶9:

On October 20, 2014, a duly authorized representative of EPA conducted a compliance evaluation inspection of the Facility (the "EPA inspection") to determine its compliance with EPCRA reporting requirements.

ANSWER:

Respondent admits that on or about October 20, 2014 a representative of EPA conducted an inspection of the Facility. Respondent lacks sufficient information to determine the truth or falsity of the remaining allegations contained in Paragraph 9 of the Complaint, and therefore denies same.

COMPLAINT ¶10:

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

ANSWER:

Paragraph 10 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Respondent admits the allegations of Paragraph 10 of the Complaint.

COMPLAINT ¶11:

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

ANSWER:

Paragraph 11 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Respondent admits the allegations of Paragraph 11 of the Complaint.

COMPLAINT ¶12:

The Facility has more than 10 "full-time employees," as the term is defined by 40 C.F.R. § 372.3.

ANSWER:

Paragraph 12 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Respondent admits the allegations of Paragraph 12 of the Complaint.

COMPLAINT ¶13:

The Facility is classified in a SIC code or NAICS code set forth in 40 C.F.R. § 372.23.

ANSWER:

Admitted.

COMPLAINT ¶14:

During the calendar years 2011, 2011[sic], 2012, and 2013, Respondent otherwise used lead, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 100 pounds set forth at 40 C.F.R. 372.28.

ANSWER:

Denied.

COMPLAINT ¶15:

During the calendar years 2011, 2012, and 2013 Respondent processed chromium, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. §372.25.

ANSWER:

Admitted.

COMPLAINT ¶16:

During the calendar years 2011 and 2012, Respondent otherwise used methanol, a toxic chemical listed under 40 C.F.R. §372.65, in quantities exceeding the threshold of 10,000 pounds set forth at 40 C.F.R. §372.65.

ANSWER:

Denied.

COMPLAINT ¶17:

The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to the Facility.

ANSWER:

Denied.

III. VIOLATIONS

Count 1: Failure to Timely File TRI Form for Lead for Reporting Year 2011

COMPLAINT ¶18:

The foregoing paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.

ANSWER:

Respondent restates and realleges its answers to paragraphs 1 through 17 as though fully set forth herein.

COMPLAINT ¶19:

During the calendar year 2011, Respondent otherwise used lead, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2012.

ANSWER:

Respondent denies that it otherwise used lead in quantities exceeding the established threshold during calendar year 2011. Respondent further denies the remaining allegations contained in Paragraph 19 of the Complaint.

COMPLAINT ¶20:

Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2012.

ANSWER:

Respondent is unable to determine what is meant by the phrase "this form" and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 20 of the Complaint and therefore, denies any and all allegations contained in Paragraph 20 of the Complaint.

COMPLAINT ¶21:

Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

ANSWER:

Respondent is unable to determine what is meant by the phrase "this form" and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 21 of the

Complaint and therefore, denies any and all allegations contained in Paragraph 21 of the Complaint.

Count 2: Failure to Timely File TRI Form for Lead for Reporting Year 2012

COMPLAINT ¶22:

The foregoing paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

ANSWER:

Respondent restates and realleges its answers to paragraphs 1 through 21 as though fully set forth herein.

COMPLAINT ¶23:

During the calendar year 2012, Respondent otherwise used lead, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2013.

ANSWER:

Respondent denies that it otherwise used lead in quantities exceeding the established threshold during calendar year 2012. Respondent further denies the remaining allegations contained in Paragraph 23 of the Complaint.

COMPLAINT ¶24:

Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2013.

ANSWER:

Respondent is unable to determine what is meant by the phrase “this form” and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 24 of the Complaint and therefore, denies any and all allegations contained in Paragraph 24 of the Complaint.

COMPLAINT ¶25:

Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

ANSWER:

Respondent is unable to determine what is meant by the phrase "this form" and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 25 of the Complaint and therefore, denies any and all allegations contained in Paragraph 25 of the Complaint.

Count 3: Failure to Timely File TRI Form for Lead for Reporting Year 2013

COMPLAINT ¶26:

The foregoing paragraphs 1 through 25 are incorporated by reference as if fully set forth herein.

ANSWER:

Respondent restates and realleges its answers to paragraphs 1 through 25 as though fully set forth herein.

COMPLAINT ¶27:

During the calendar year 2013, Respondent otherwise used lead, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2014.

ANSWER:

Respondent denies that it otherwise used lead in quantities exceeding the established threshold during calendar year 2013. Respondent further denies the remaining allegations contained in Paragraph 27 of the Complaint.

COMPLAINT ¶28:

Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2014.

ANSWER:

Respondent is unable to determine what is meant by the phrase “this form” and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 28 of the Complaint and therefore, denies any and all allegations contained in Paragraph 28 of the Complaint.

COMPLAINT ¶29:

Respondent’s failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

ANSWER:

Respondent is unable to determine what is meant by the phrase “this form” and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 29 of the Complaint and therefore, denies any and all allegations contained in Paragraph 29 of the Complaint.

Count 4: Failure to Timely File TRI Form for Chromium for Reporting Year 2011

COMPLAINT ¶30:

The foregoing paragraphs 1 through 29 are incorporated by reference as if fully set forth herein.

ANSWER:

Respondent restates and realleges its answers to paragraphs 1 through 29 as though fully set forth herein.

COMPLAINT ¶31:

During the calendar year 2011, Respondent processed chromium, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2012.

ANSWER:

Admitted.

COMPLAINT ¶32:

Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2012.

ANSWER:

Respondent is unable to determine what is meant by the phrase "this form" and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 32 of the Complaint and therefore, denies any and all allegations contained in Paragraph 32 of the Complaint.

COMPLAINT ¶33:

Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

ANSWER:

Respondent is unable to determine what is meant by the phrase "this form" and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 33 of the Complaint and therefore, denies any and all allegations contained in Paragraph 33 of the Complaint.

Count 5: Failure to Timely File TRI Form for Chromium for Reporting Year 2012

COMPLAINT ¶34:

The foregoing paragraphs 1 through 33 are incorporated by reference as if fully set forth herein.

ANSWER:

Respondent restates and realleges its answers to paragraphs 1 through 33 as though fully set forth herein.

COMPLAINT ¶35:

During the calendar year 2012, Respondent processed chromium, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore

required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2013.

ANSWER:

Admitted.

COMPLAINT ¶36:

Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2013.

ANSWER:

Respondent is unable to determine what is meant by the phrase “this form” and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 36 of the Complaint and therefore, denies any and all allegations contained in Paragraph 36 of the Complaint.

COMPLAINT ¶37:

Respondent’s failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

ANSWER:

Respondent is unable to determine what is meant by the phrase “this form” and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 37 of the Complaint and therefore, denies any and all allegations contained in Paragraph 37 of the Complaint.

Count 6: Failure to Timely File TRI Form for Chromium for Reporting Year 2013

COMPLAINT ¶38:

The foregoing paragraphs 1 through 37 are incorporated by reference as if fully set forth herein.

ANSWER:

Respondent restates and realleges its answers to paragraphs 1 through 37 as though fully set forth herein.

COMPLAINT ¶39:

During the calendar year 2013, Respondent processed chromium, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2014.

ANSWER:

Admitted.

COMPLAINT ¶40:

Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2014.

ANSWER:

Respondent is unable to determine what is meant by the phrase "this form" and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 40 of the Complaint and therefore, denies any and all allegations contained in Paragraph 40 of the Complaint.

COMPLAINT ¶41:

Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

ANSWER:

Respondent is unable to determine what is meant by the phrase "this form" and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 41 of the Complaint and therefore, denies any and all allegations contained in Paragraph 41 of the Complaint.

Count 7: Failure to Timely File TRI Form for Methanol for Reporting Year 2011

COMPLAINT ¶42:

The foregoing paragraphs 1 through 41 are incorporated by reference as if fully set forth herein.

ANSWER:

Respondent restates and realleges its answers to paragraphs 1 through 41 as though fully set forth herein.

COMPLAINT ¶43:

During the calendar year 2011, Respondent otherwise used methanol, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2012.

ANSWER:

Respondent denies that it otherwise used methanol in quantities exceeding the established threshold during calendar year 2011. Respondent further denies the remaining allegations contained in Paragraph 43 of the Complaint.

COMPLAINT ¶44:

Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2012.

ANSWER:

Respondent is unable to determine what is meant by the phrase “this form” and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 44 of the Complaint and therefore, denies any and all allegations contained in Paragraph 44 of the Complaint.

COMPLAINT ¶45:

Respondent’s failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

ANSWER:

Respondent is unable to determine what is meant by the phrase "this form" and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 45 of the Complaint and therefore, denies any and all allegations contained in Paragraph 45 of the Complaint.

Count 8: Failure to Timely File TRI Form for Methanol for Reporting Year 2012

COMPLAINT ¶46:

The foregoing paragraphs 1 through 45 are incorporated by reference as if fully set forth herein.

ANSWER:

Respondent restates and realleges its answers to paragraphs 1 through 45 as though fully set forth herein.

COMPLAINT ¶47:

During the calendar year 2012, Respondent otherwise used methanol, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2013.

ANSWER:

Respondent denies that it otherwise used methanol in quantities exceeding the established threshold during calendar year 2012. Respondent further denies the remaining allegations contained in Paragraph 47 of the Complaint.

COMPLAINT ¶48:

Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2013.

ANSWER:

Respondent is unable to determine what is meant by the phrase "this form" and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 48 of the

Complaint and therefore, denies any and all allegations contained in Paragraph 48 of the Complaint.

COMPLAINT ¶49:

Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

ANSWER:

Respondent is unable to determine what is meant by the phrase "this form" and is unable to form a belief as to the truth or falsity of the allegations contained in Paragraph 49 of the Complaint and therefore, denies any and all allegations contained in Paragraph 49 of the Complaint.

IV. PROPOSED PENALTIES

The Complaint contains paragraphs numbered 50 - 54 regarding Complainant's proposed penalties. Without admitting that these matters are properly pled and/or require a response, Respondent states as follows: As set forth herein, Respondent denies that it has violated the referenced statutes. Respondent therefore denies that it is liable for penalties. Respondent further states that to the extent any violation is found to have occurred, which Respondent denies, the penalties proposed by Complainant are inappropriate and that, in fact, no penalty should be awarded given the nature, extent and gravity of the alleged violation and taking into account all appropriate factors as justice requires. EPA incorrectly applied its penalty guidance, and in any event, the Administrative Law Judge is not obligated to follow the penalty policy.

REQUEST FOR HEARING

Respondent hereby requests a hearing on this matter.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed and that judgment be entered in favor of the Respondent and that Respondent be awarded such further relief as appropriate.

DATED: February 4, 2016

SAVAGE ARMS, INC.

By: 

One of Its Attorneys

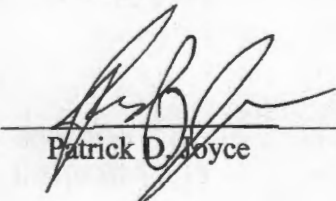
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he served a copy of the foregoing Answer to Complaint and Request for Hearing to the following via email, before the hour of 5:00 pm, on February 4, 2016:

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