



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 07 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Greg Searcy
VP & General Manager
Aluma-Tec Industries
W222 N833 Cheaney Road
Waukesha, Wisconsin 53186

Re: In the Matter of Aluma-Tec Industries, Indiana
Docket No, **EPCRA-05-2008-0009**

Dear Mr. Searcy:

I have enclosed a Complaint filed against Aluma-Tec Industries, according to Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §11045(c)(1). The Complaint alleges violations of Section 312 of EPCRA, 42 U.S.C. § 11022(a).

As provided in the Complaint, if you would like to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this Complaint, the Presiding Officer may issue a default order and the proposed civil penalty will become due 30 days later. Mail your answer to Susan Tennenbaum, Associate Regional Counsel (C-14), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

In addition, whether or not you request a hearing, you may request an informal settlement conference by contacting Ruth McNamara at (312) 353-3193. If you have any legal questions, please contact Susan Tennenbaum, Associate Regional Counsel at (312) 886-0273.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Linda M. Nachowicz".

Linda M. Nachowicz, Chief
Emergency Response Branch 2

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**Aluma-Tec Industries
W222 N833 Cheaney Road
Waukesha, Wisconsin 53186**

Respondent.

) **Docket No. EPCRA-05-2008-0009**
)
) **Proceeding to a Civil Penalty Under Section**
) **325(c)(1) of the Emergency Planning and**
) **Community Right-to-Know Act of 1986**
)
)
)
)

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US EPA REGION V

Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C § 11045(c)(1).
2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 2, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. The Respondent is Aluma-Tec Industries, a corporation doing business in the State of Wisconsin.

Statutory and Regulatory Background

4. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 or

Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

5. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

6. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

7. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

General Allegations

8. Respondent is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

9. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at W222 N833 Cheaney Road, Waukesha, Wisconsin (facility).

10. At all times relevant to this Complaint, Respondent was an employer at the facility.

11. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

12. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

13. Sulfuric acid and nitric acid are listed as toxic and hazardous substances under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

14. Sulfuric acid, CAS# 7664-93-9, and nitric acid, CAS# 7697-37-2, are "extremely hazardous substances according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

15. Sulfuric acid, CAS# 7664-93-9, and nitric acid, CAS# 7697-37-2, have a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

16. During at least one period of time in calendar year 2006, sulfuric acid and nitric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

17. During at least one period of time in calendar year 2005, sulfuric acid and nitric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

18. During at least one period of time in calendar year 2004, sulfuric acid and nitric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

19. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid and nitric acid.

20. Respondent was required to submit to the state emergency response commission (SERC), local emergency planning committee (LEPC), and fire department a completed emergency and hazardous chemical inventory form including sulfuric acid and nitric acid on or before March 1, 2007 for calendar year 2006; on or before March 1, 2006 for calendar year 2005, and on or before March 1, 2005 for calendar year 2004.

21. At all times relevant to this Complaint, the Wisconsin Emergency Management was the SERC for Wisconsin under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

22. At all times relevant to this Complaint, the Waukesha County Emergency Management was the LEPC for Waukesha County, Wisconsin under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

23. At all times relevant to this Complaint, the Peewaukee Fire Department was the fire department with jurisdiction over the facility.

Count 1

24. Complainant incorporates paragraphs 1 through 23 of this Complaint as if set forth in this paragraph.

25. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid on May 21, 2007, for calendar year 2006.

26. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid by March 1, 2007, for calendar year 2006 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

Count 2

27. Complainant incorporates paragraphs 1 through 23 of this Complaint as if set forth in this paragraph.

28. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid on May 21, 2007, for calendar year 2006.

29. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid by March 1, 2007, for calendar year 2006 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3

30. Complainant incorporates paragraphs 1 through 23 of this Complaint as if set forth in this paragraph.

31. Respondent submitted to the Peewaukee Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid on May 21, 2007, for calendar year 2006.

32. Each day Respondent failed to submit to the Peewaukee Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid by March 1, 2007, for calendar year 2006 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 4

33. Complainant incorporates paragraphs 1 through 23 of this Complaint as if set forth in this paragraph.

34. Respondent submitted to the SERC, LEPC, and Peewaukee Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid on May 21, 2007, for calendar year 2005.

35. Each day Respondent failed to submit to the SERC, LEPC, and Peewaukee Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid by March 1, 2006, for calendar year 2005 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

Count 5

36. Complainant incorporates paragraphs 1 through 23 of this Complaint as if set forth in this paragraph.

37. Respondent submitted to the SERC, LEPC, and Peewaukee Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid on May 21, 2007, for calendar year 2004.

38. Each day Respondent failed to submit to the SERC, LEPC, and Peewaukee Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid by March 1, 2005, for calendar year 2004 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

Proposed EPCRA Penalty

39. Section 325(c)(1) of EPCRA, 42 U.S.C § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

40. Based upon an evaluation of the facts alleged in this Complaint, and after considering the nature, circumstances, extent and gravity of the violations, the violator's ability to pay, prior history of violations, degree of culpability, economic benefit or saving resulting from the violations, and any other matters that justice may require, Complainant proposes that the U.S. EPA assess a civil penalty against Respondent of \$85,425 for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various EPCRA counts of this Complaint as follows:

Count 1	EPCRA Section 312(a) (SERC):	\$27,625
Count 2	EPCRA Section 312(a) (LEPC):	\$27,625

Count 3	EPCRA Section 312(a) (fire dept.):	\$27,625
Count 4	EPCRA Section 312(a) (SERC, LEPC, fire dept.):	\$ 1,275
Count 5	EPCRA Section 312(a) (SERC, LEPC, fire dept.):	\$ 1,275
TOTAL EPCRA SECTION 325 PENALTY:		\$85,425

41. Complainant calculated the EPCRA penalties by evaluating the facts and circumstances of this case with specific reference to U.S. 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 (dated September 30, 1999)", a copy of which is enclosed with this Complaint.

Rules Governing this Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the U.S. EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Susan

Tennenbaum to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Susan Tennenbaum at (312) 886-0273. Her address is:

Susan Tennenbaum (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Terms of Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check for the EPCRA violations payable to the "Treasurer, United States of America" to

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

Respondent must include the case name, docket number and the billing document number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and Susan Tennenbaum at the addresses given above, and to:

Ruth McNamara, (SC-6J)
Office of Chemical Emergency
Preparedness and Prevention
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact alleged in this Complaint or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent

must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and,
- d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations.

Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Ruth McNamara at (312) 353-3193.

Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through informal conference. However, Complainant will not reduce the penalty simply because the parties hold an informal settlement conference.

U.S. Environmental Protection Agency, Complainant

Apr. 4, 2008

Date

Mark J. Hawitz
Linda M. Nachowicz, Chief
Emergency Response Branch 2
Superfund Division

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**In the Matter of:
Aluma-Tec Industries, Waukesha, Wisconsin
Docket No. EPCRA-05-2008-0009**

In the Matter of:
Aluma-Tec Industries, Waukesha, Wisconsin
Docket No. EPCRA-05-2008-0009

Certificate of Service

I, Ruth McNamara, certify that I filed the original and one copy of the Complaint, docket number EPCRA-05-2008-0009 with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a copy to the Respondent by first-class, postage prepaid, certified mail, return receipt requested, along with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, and the Enforcement Response Policy, by placing them in the custody of the United States Postal Service addressed as follows:

Greg Searcy
VP & General Manager
Aluma-Tec Industries
W222 N833 Cheaney Road
Waukesha, Wisconsin

on the 7th day of April, 2008.

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5

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