



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, WA 98101

December 14, 2007

Reply To  
Attn Of: ORC-158

Carol Kennedy  
Regional Hearing Clerk  
US Environmental Protection Agency, Region 10  
Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Re: In the Matter of: Firestone Pacific Foods, Inc., Docket No. EPCRA 10-2007-0204

Dear Regional Hearing Clerk:

Please find enclosed the original Complainant's Initial Prehearing Exchange, with copies of exhibits, and one true and correct copy. A copy was sent to the Honorable Susan L. Biro, Chief Administrative Law Judge via pouch mail and to Respondent's counsel Ben Shafton by Certified Mail Return Receipt Requested. (see certificate of service for details).

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Robert Hartman".

Robert Hartman  
Assistant Regional Counsel

cc: Honorable Susan L. Biro.  
Ben Shafton, Esquire

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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: )  
 )  
FIRESTONE PACIFIC FOODS, INC., ) Docket No. EPCRA10-2007-0204  
 )  
Vancouver, Washington ) COMPLAINANT'S INITIAL  
 ) PREHEARING EXCHANGE  
Respondent. )  
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Pursuant to the Presiding Officer's Prehearing Order issued on November 8, 2007 and Section 22.19(a) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("CROP rules"), the United States Environmental Protection Agency, Region 10 ("Complainant" or "EPA") hereby submits the following Initial Prehearing Exchange.

**I. FACT WITNESSES**

Following is a list of the fact witnesses Complainant intends to call at hearing, with a brief narrative summary of their expected testimony:

1.1. Suzanne Powers will be called as a fact witness. Ms. Powers is an EPA inspector and is also the Enforcement Coordinator for EPA's Emergency Planning and Community Right-to-Know Act ("EPCRA") Sections 304, 311, and 312 Program. Her address is 300 Desmond Drive S.E., Suite 102, Lacey, Washington 98503. As part of her duties as the EPCRA

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Enforcement Coordinator, Ms. Powers conducts EPCRA inspections and collects and reviews evidence regarding possible violators of EPCRA. Ms. Powers is expected to testify regarding her review of EPA records and information provided by Ted Mix, an EPA Senior Environmental Employee ("SEE") inspector who inspected the Firestone Pacific Foods, Inc., facility, regarding the basis for EPA's claim that Firestone Pacific Foods, Inc. ("Respondent") violated Section 312 of EPCRA, as alleged in the Complaint. A copy of Ms. Powers' Investigation Report is attached as Complainants Exhibit 3. She will also testify that she calculated the penalty proposed in the Complaint for the EPCRA violations in accordance with the EPCRA/CERCLA Enforcement Response Policy ("ERP") and explain the factors she considered in calculating the proposed penalty amount. Ms. Power's Penalty Recommendation and Recalculation memorandum is attached as Complainant's Exhibit 7. Her resume is attached as Complainant's Exhibit 12.

1.2. Theodore J. Mix will be called as a fact witness. Mr. Mix is a professional engineer who works as an inspector in EPA's Office of Environmental Cleanup as a part of the Senior Environmental Employment Program. His address is 300 Desmond Drive S.E., Suite 102, Lacey, Washington 98503. His duties include inspecting facilities subject to EPCRA and collecting and reviewing evidence regarding possible violations of EPCRA. Mr. Mix will testify that, on April 28, 2006, he inspected the Firestone Pacific Foods, Inc., facility, located at 4211 NW Fruit Valley Road, Vancouver, Washington. Mr. Mix will testify regarding his observations and findings during the inspections, including the amount of ammonia present at the facility. Mr. Mix will also testify that prior to leaving the facility he left information about EPCRA and

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provided the Emergency Chemical Release Reporting Compliance Assistance Packet which includes emergency and hazardous chemical inventory ("Tier II") forms for the reporting year 2005, with Mr. Schmitz, the plant manager. A copy of the Emergency Chemical Release Reporting Compliance Assistance Packet left by Mr. Mix is attached as Complainant's Exhibit 20. Mr. Mix is also expected to testify to actions that he took in follow-up to the inspection of the Firestone Pacific Foods, Inc., facility. Mr. Mix will testify that, approximately two weeks after the inspection, he determined that the facility still had not submitted its Tier II forms to the State Emergency Response Commission ("SERC"), or the Local Emergency Planning Committee ("LEPC"), or the Fire Department, and that he made a telephone call to Mr. Schmitz to remind him to submit the forms. Mr. Mix's telephone record of his call to Mr. Schmitz is attached as Complainant's Exhibit 15. Mr. Mix will also testify that, on that on September 18, 2006, he made two separate calls, one to John Wheeler of the Clark Regional Emergency Services Agency and Clark County LEPC, and one to Captain Daniel Monaghan of the Vancouver, Washington, Fire Department regarding the filing of Tier II forms by Firestone Pacific Foods, Inc. Mr. Mix will testify that John Wheeler and Captain Daniel Monaghan stated to him that they had not received a Tier II form from Firestone Pacific Foods, Inc. Mr. Mix's record of his telephone conversations with John Wheeler and Captain Daniel Monaghan are attached as Complainant's Exhibits 13 and 14. Mr. Mix's resume is attached as Complainant's Exhibit 11.

1.3. Sadie Whitener will be called as a fact witness. Ms. Whitener is a team member of the Community Right-to Know Unit within the Washington State Department of Ecology's ("WDOE") Hazardous Substance Information and Education Office. One of the duties of WDOE's Hazardous Substance Information Office is to receive and maintain records submitted to the SERC by regulated entities pursuant to EPCRA Section 312, 42 U.S.C. § 11022. Ms. Whitener is responsible for managing the EPCRA Tier II reporting activities on behalf of the SERC. Ms. Whitener is expected to testify regarding her review of the WDOE Community Right-to-Know Unit records and that, based on her review WDOE had never, at any time, prior to December 22, 2006, received a Tier II form from Firestone Pacific Foods, Inc., for any years. She is also expected to testify that WDOE did receive a mostly complete Tier II form from Firestone Pacific Foods, Inc., on December 22, 2006, for reporting year 2005, and that on February 27, 2007, WDOE received a Tier II form from Firestone Pacific Foods, Inc. for calendar year 2006, and a revised Tier II form for calendar year 2005. Ms. Whitener's declaration summarizing her testimony is attached as Complainant's Exhibit 16.

1.4. John Wheeler will be called as a fact witness. John Wheeler is the Emergency Management Coordinator at Clark Regional Emergency Services Agency ("CRESA"). Among other things the duties of CRESA include receiving and maintaining records submitted to the Clark County LEPC by regulated entities pursuant to EPCRA Section 312, 42 U.S.C. § 11022. Mr. Wheeler is responsible for managing the EPCRA Tier II reporting activities on behalf of the Clark County, LEPC. Mr. Wheeler is expected to testify that, in response to a request from EPA

on September 18, 2006, CRESA reviewed its Tier II files for any records for Firestone Pacific Foods, Inc., of Vancouver, Washington, and during that review, found no records. Mr. Wheeler will also testify that his review of the Clark County LEPC records, on September 18, 2006, revealed a Tier II form from Firestone Pacific Foods, Inc., for calendar year 2005, and in addition, that on February 23, 2007, the LEPC received a Tier II form from Firestone Pacific Foods, Inc., for calendar year 2006, and a revised Tier II form for calendar year 2005. Mr. John Wheeler's declaration summarizing his testimony is attached as Complainant's Exhibit 17.

1.5. Daniel Monaghan will be called as a fact witness. Mr. Monaghan is the Chief of Special Operations for the City of Vancouver, Washington, Fire Department. Among other things, the duties of the Vancouver Fire Department include receiving and maintaining records submitted by regulated entities pursuant to EPCRA Section 312, 42 U.S.C. § 11022. Among his duties, Mr. Monaghan is responsible for managing EPCRA Tier II reporting activities on behalf of the City of Vancouver, Washington, Fire Department. Mr. Monaghan is expected to testify that, prior to December 21, 2006, the Fire Department had never received a Tier II form from Firestone Pacific Foods, Inc., of Vancouver, Washington, for any year. He is also expected to testify that the Fire Department did receive a Tier II form from Firestone Pacific Foods, Inc., on December 21, 2006, for calendar year 2005, and that on February 22, 2007, the Fire Department received a Tier II form from Firestone Pacific Foods, Inc., for calendar year 2006, and a revised Tier II form for calendar year 2005. Mr. Daniel Monaghan's declaration summarizing his testimony is attached as Complainant's Exhibit 18.

## II. DOCUMENTS AND EXHIBITS

Copies of documents Complainant intends to introduce into evidence are numbered and attached hereto as follows:

- Complainant's Ex. 1: Material Safety Data Sheet, Ammonia
- Complainant's Ex. 2: Washington State Tier II Emergency and Hazardous Chemical Inventory Form, (and accompanying instructions)
- Complainant's Ex. 3: EPA Region 10 Investigation Report for Firestone Pacific Foods, Inc., Facility, Vancouver, Washington, dated October 18, 2006
- Complainant's Ex. 4: Log of Photographs included in the EPA Region 10 Investigation Report for Firestone Pacific Foods, Inc.
- Complainant's Ex. 5: Enforcement Response Policy for Sections 301, 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
- Complainant's Ex. 6: EPA Memorandum Entitled "Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule, dated June 5, 2006
- Complainant's Ex. 7: Firestone Pacific Foods, Inc., Penalty Recommendation and Recalculation Memorandum from Suzanne Powers to Robert Hartman, dated July 30, 2007
- Complainant's Ex. 8: Letter from PermaCold Engineering, Inc. to Mr. Stan Firestone, dated March 23, 2007
- Complainant's Ex. 9: The Firestone Pacific Foods, Inc.'s EPCRA Penalty Calculation Worksheets for Counts 1-15
- Complainant's Ex. 10: Dun and Bradstreet Report for Firestone Pacific Foods, Inc. dated September 19, 2006
- Complainant's Ex. 11: Ted Mix's Resume

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- Complainant's Ex.12: Suzanne Powers's Resume
- Complainant's Ex.13: Record of Ted Mix's Telephone Conversation with John Wheeler on September 18, 2006
- Complainant's Ex.14: Record of Ted Mix's Telephone Conversation with Capt. Daniel Monaghan on September 18, 2006
- Complainant's Ex.15: Record of Ted Mix's Telephone Conversation with Mr. Zack Schmitz on May 15, 2006
- Complainant's Ex.16: Declaration of Sadie Whitener
- Complainant's Ex.17: Declaration of John Wheeler
- Complainant's Ex.18: Declaration of Daniel Monaghan
- Complainant's Ex.19: EPA's Inspection Conclusion Data Sheet ("ICDS") for Firestone Pacific Foods, Inc., submitted May, 5, 2006
- Complainant's Ex. 20: Emergency Chemical Release Reporting Compliance Assistance Packet
- Complainant's Ex. 21: Record of Ted Mix's Telephone Conversation with John Wheeler and Deb Needham on April 2, 2007
- Complainant's Ex. 22: Record of Ted Mix's Telephone Conversation with Daniel Monaghan on April 9, 2007
- Complainant's Ex. 23: E-mail from Sadie Whitener to Suzanne Powers dated January 18, 2007
- Complainant's Ex. 24: Copies of Firestone Pacific Foods, Inc.'s Tier II reports received by the SERC on December 22, 2006, and February 27, 2007

### **III. LOCATION OF HEARING AND ESTIMATED TIME TO PRESENT DIRECT CASE**

3.1 Respondent's headquarters office is located in Vancouver, Washington, where the violations occurred. EPA's Offices are located in Seattle, Washington, and in Portland, Oregon

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which is just across the Columbia River from Vancouver. In accordance with Section 22.21(d) of the CROP Rules, Complainant proposes that the hearing take place in Vancouver, Washington.

3.2 Complainant estimates that it will require approximately one day to present its direct case.

#### **IV. ADDITIONAL INFORMATION REQUESTED BY PRESIDING OFFICER**

4.1. Complainant responds to the request for additional information by the Presiding Officer as follows:

A. A copy of a general Washington State Emergency and Hazardous Chemical Inventory Form is attached as Complainant's Exhibit 2. A copy of a Material Safety Data Sheet for Anhydrous Ammonia is attached as Complainant's Exhibit 1.

B. A copy of EPA's Investigation Report for Firestone Pacific Foods, Inc., in support the finding that Ammonia was present at Respondent's fruit-processing facility at 4211 NW Fruit Valley Road in Vancouver, Washington, in an amount equal to or greater than 500 pounds during some period of time in each of the years 2001 through 2005, is attached as Complainant's Exhibit 3. A copy of the EPA EPCRA non 313 EPA Inspection Conclusion Data Sheet ("ICDS") for the inspection of the Firestone Pacific Foods, Inc., facility, which briefly summarizes the findings of the inspection, is included as Complainant's Exhibit 19. Finally, a letter from PermaCold Engineering, Inc. to Mr. Stan Firestone, dated March 23, 2007, is

included in support of the amount of Ammonia present in the High Pressure Ammonia Receiver at Firestone Pacific Foods, Inc.'s facility is included as Complainant's Exhibit 8.

C. A copy of a declaration by Ms. Sadie Whitener, who is responsible for managing the EPCRA Tier II reporting activities on behalf of the SERC, confirming that Firestone Pacific Foods, Inc. failed to submit to the SERC a completed Tier II form which includes Ammonia for the calendar years 2001-2005, is attached as Complainant's Exhibit 16.

D. A copy of a declaration by John Wheeler, Emergency Management Coordinator at CRESA, who is responsible for managing the EPCRA Tier II reporting activities on behalf of the Clark County, LEPC, confirming Firestone Pacific Foods, Inc.'s failure to submit to the LEPC a completed Tier II form which includes Ammonia for calendar years 2001-2005, is attached as Complainant's Exhibit 17. A copy of a Record of Ted Mix's telephone conversation on September 18, 2006, with John Wheeler regarding Firestone Pacific Foods, Inc.'s failure to submit any Tier II forms for the calendar years 2001-2005, is attached as Complainant's Exhibit 13. Finally, a copy of a record of Ted Mix's telephone conversation on April 2, 2007, with John Wheeler, and Debra Needhan of the Clark County LEPC regarding Firestone Pacific Foods, Inc.'s failure to submit any Tier II forms for the calendar years 2001-2005, is attached as Complainant's Exhibit 21.

E. A copy of the declaration of Daniel Monaghan, the Chief of Special Operations for the City of Vancouver, Washington, Fire Department, who is responsible for managing the EPCRA Tier II reporting activities on behalf of the City of Vancouver, Washington, Fire

Department, confirming Firestone Pacific Foods, Inc.'s failure to submit to the Fire Department a completed Tier II form which includes Ammonia for calendar years 2001-2005, is attached as Complainant's Exhibit 18. Copies of the records of the Ted Mix's telephone conversations on September 18, 2006, and April 9, 2007, with Mr. Monaghan regarding Firestone Pacific Foods, Inc.'s failure to submit any Tier II forms, which includes Ammonia to the Fire Department for the calendar years 2001-2005, are attached as Complainant's Exhibits 14 and 22.

F. A copy of the September 30, 1999, EPA's Enforcement Response Policy for Sections 302, 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 is attached as Complainant's Exhibit 5. A copy of EPA Memorandum Entitled "The Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule", dated June 5, 2006, is included as Complainant's Exhibit 6.

G. A copy of Suzanne Powers's EPCRA Civil Penalty Recommendations, and Recalculation Memorandum for Firestone Pacific Foods, Inc., is attached as Complainant's Exhibit 7<sup>1</sup>. A copy of the separate Penalty Calculation Worksheet for Counts 1-15, detailing exactly how the penalty for each count was calculated is attached as Complainant's Exhibit 9. A copy of the Dun and Bradstreet report for Firestone Pacific Foods, Inc., is attached as Complainant's Exhibit 10.

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<sup>1</sup> Upon review of the penalty calculations for the proposed administrative penalty, EPA discovered that the total proposed penalty of \$44,190 was incorrectly stated in Paragraph 4.3. of the Complaint. The total proposed penalty when added correctly is \$42,690. This lower amount is what Complainant will seek at hearing.

H. The Paperwork Reduction Act of 1980 ("PRA"), as amended, 44 U.S.C. § 3501 *et seq.*, applies to Counts 1-15 in which Complainant alleges that Firestone Pacific Foods, Inc. failed to submit Tier II forms to the SERC, LEPC, and Fire Department as required by Section 312 of EPCRA. The information collection activities required under 40 C.F.R. Part 370 have been approved by the Office of Management and Budget ("OMB") pursuant to the PRA and the OMB implementing regulations at 5 C.F.R. § 1320 *et seq.* The OMB Control Number is 2050-0072. OMB last renewed this approval in 2005 pursuant to EPA Information Control Request ("ICR") Number 1352.10, that approval is valid for three years. A review of EPA records reveals that there have been no lapses in OMB approval of the information collection activities authorized under OMB Control Number 2050-0072 since at least February 2000. Because EPA has complied with the PRA for purposes of the requirements under Sections 311 and 312 of EPCRA and related information collection activities, the public protection provisions of the PRA at 44 U.S.C. § 3512 do not apply.

#### V. RESERVATIONS

5.1. Complainant reserves the right to call all witnesses named by Firestone Pacific Foods, Inc.. Complainant further reserves the right to submit the names of additional witnesses and to submit additional exhibits prior to the hearing of this matter, upon timely notice to the Presiding Officer and to Firestone Pacific Foods, Inc..

5.2. Pursuant to Section 22.19(e) of the CROP Rules, Complainant also reserves the right to compel the disclosure of information concerning Firestone Pacific Foods, Inc.'s

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economic benefit from the alleged violations and ability to pay the proposed penalty should Firestone Pacific Foods, Inc. fail to include such information in its initial prehearing information exchange.

Respectfully submitted this 14th day of December, 2007.



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Robert Hartman  
Assistant Regional Counsel  
U.S. EPA Region 10

In the Matter of: Firestone Pacific Foods, Inc.

Docket No. EPCRA 10-2007-0204

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of **COMPLAINANT'S INITIAL PREHEARING EXCHANGE**, with copies of exhibits was sent to the followings persons in the manner specified on the date below:

Original with exhibits, and one true and correct copy, by hand delivery:

*Carol Kennedy, Regional Hearing Clerk  
US Environmental Protection Agency, Region 10  
Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101*

One true and correct copy with exhibits by hand delivered to:

*Robert Hartman, Assistant Regional Counsel  
US Environmental Protection Agency, Region 10  
Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101*

One true and correct copy with exhibits by pouch mail delivered to:

*The Honorable Susan L. Biro, Chief Administrative Law Judge  
Office of Administrative Law Judges  
US Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460*

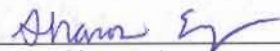
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Seattle, Washington 98101  
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One true and correct copy with exhibits by Certified Mail Return Receipt Requested delivered to

*Ben Shafton, Esquire  
Caron, Colven, Robinson & Shafton, P.S.  
900 Washington Street, Suite 1000  
Vancouver, Washington 98660*

Dated: 12/14/2007

  
Sharon Eng

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