



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

APR 13 2007

REPLY TO THE ATTENTION OF

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeffrey K. Thomas
Corporate Counsel
SuperClean Brands Inc.
2855 Eagandale Blvd.
Eagan, MN 55121

Re: In the Matter of SuperClean Brands Inc., dba Fox Packaging Company, St. Paul, MN
Docket No: **EPCRA-05-2007-0013**

Dear Mr. Thomas:

I have enclosed a Complaint filed against SuperClean Brands Inc., dba Fox Packaging Company, 51 E. Maryland Avenue, St. Paul, Minnesota pursuant to Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045. The Complaint alleges violations of Section 312(a) of EPCRA, 42 U.S.C. § 11012(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.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Ruth McNamara (312) 353-3193. If you have any legal questions contact Jeffrey Trevino, Assistant Regional Counsel at (312) 886-6729.

Sincerely yours,

A handwritten signature in cursive script that reads "Mark J. Horwitz".

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosures (4) Complaint

Consolidated Rules

Enforcement Response Policy

Supplemental Environmental Projects Policy

cc: Jeff Trevino
Office of Regional Counsel

Sherry L. Stenerson
General Counsel
Factory Motor Parts Company
1380 Corporate Center Curve
Egan, MN 55121

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. EPCRA-05-2007-0013
)
SuperClean Brands Inc.) Proceeding to Assess a Civil
dba Fox Packaging Company) Penalty under Section 325(c) of
51 E. Maryland Avenue) the Emergency Planning and
St. Paul, MN 55117) Community Right-to-Know Act of
) 1986.
)
Respondent.)
)
_____)

Complaint

1. This is an administrative proceeding to assess a civil penalty under section 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and (c)(2).

2. The Complainant is, by lawful delegation, the Chief, Emergency Response Branch 1, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. The Respondent is SuperClean Brands Inc., a corporation doing business in the State of Minnesota as Fox Packaging Company.

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 Administration (OSHA) at 29 C.F.R. part 1910 to

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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 of each year an emergency and hazardous chemical inventory form (Tier 1 or Tier II as described in 40 C.F.R. part 370) when appropriate. 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. 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.

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

General Allegations

7. Respondent is a corporation organized under the laws of the State of Minnesota.

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 51 E. Maryland Avenue, St. Paul, Minnesota (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. Methanol (CAS# 67-56-1) is an irritant to skin and respiratory system, and if inhaled may cause metabolic acidosis, blindness or death.

14. Isopropyl alcohol (CAS 67-63-0) is an irritant to the respiratory system, can cause headache, dizziness, nausea, incoordination, drowsiness and loss of consciousness.

15. Ethylene glycol (CAS 107-21-1) is an irritant to the eyes and respiratory system, and may cause headaches, nausea, and drowsiness.

16. Methanol, isopropyl alcohol, and ethylene glycol are each a health hazard and are thus hazardous chemicals under 29 C.F.R. § 1910.1200(c).

17. Methanol, isopropyl alcohol, and ethylene glycol are each a "hazardous chemical" within the meaning of section 311(e) of EPCRA, 42 U.S.C. § 11021(e).

18. Methanol, isopropyl alcohol, and ethylene glycol each have a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.20(b)(2).

19. During at least one period of time in calendar year 2005, methanol, isopropyl alcohol, and ethylene glycol were each present at the Facility in an amount equal to or greater than 10,000 pounds.

20. At all times relevant to this Complaint, the Minnesota Division of Homeland Security and Emergency Management was the state emergency response commission (SERC) for the State of Minnesota, under section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

21. At all times relevant to this Complaint, the St. Paul Fire Department was the fire department with jurisdiction over the Facility.

Count I
Failure to File Tier Form for 2005 - SERC
42 U.S.C. § 11002(a)

22. Complainant incorporates paragraphs 1 through 21 of this Complaint as if set forth in this paragraph.

23. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including methanol, isopropyl alcohol, and ethylene glycol on May 22, 2006, for calendar year 2005.

24. Each and every day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including methanol, isopropyl alcohol, and ethylene glycol by March 1, 2006, for calendar year 2005 is a violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count II
Failure to File Tier Form for 2004 - Local Fire Dep't
42 U.S.C. § 11002(a)

25. Complainant incorporates paragraphs 1 through 21 of this Complaint as if set forth in this paragraph.

26. Respondent submitted to the St. Paul Fire Department a completed Emergency and Hazardous Chemical Inventory Form including methanol, isopropyl alcohol, and ethylene glycol on May 22, 2006, for calendar year 2005.

27. Each and every day Respondent failed to submit to the St. Paul Fire Department a completed Emergency and Hazardous Chemical Inventory Form including methanol, isopropyl alcohol,

and ethylene glycol by March 1, 2006 for calendar year 2005 is a violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Proposed EPCRA Penalty

28. 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 per day of violation for each EPCRA section 312 violation that occurred before January 31, 1997. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. part 19, increased these statutory maximum penalties 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.

29. 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, history of violations, degree of culpability, economic benefit or savings resulting from the violations, and any other matters that justice requires, Complainant calculated a civil penalty of \$84,150 for the EPCRA violations. However, based on additional financial information provided by the Respondent, Complainant has determined that Respondent would not be able to pay the proposed penalty of \$84,150. Based on the financial evaluation Complainant proposes that the Administrator assess a

civil penalty against Respondent of **\$48,178** for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various counts of this Complaint as follows:

Count I	EPCRA Section 312 (SERC):	\$24,089
Count II	EPCRA Section 312 (Fire Dep't):	\$24,089
TOTAL EPCRA SECTION 312 PENALTY		\$48,178

30. 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

31. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (the 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.

Terms of Payment

32. Respondent may pay the proposed penalty for the EPCRA violations by sending a certified or cashier's check, payable to the "Treasurer, United States of America," to:

U.S. EPA Region 5
Attn.: Finance
P.O. Box 371531
Pittsburgh, PA 15251-7531

33. The check must note the case title of this matter: In re: SuperClean Brands, Inc., d/b/a Fox Packaging Company, the docket number of this Complaint and the billing document number

34. A transmittal letter, stating the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Ruth McNamara
Office of Chemical Emergency Preparedness
and Prevention (SC-6J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Jeffrey Trevino
Office of Regional Counsel (C-14J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

35. Alternatively, Respondent may pay by wire transfer to Federal Reserve Bank of New York, Routing, ABA Number 021030004 for Account Number 68010727, U.S. EPA. The wire payment must have the billing document number _____.

36. This civil penalty is not deductible for federal tax purposes.

Notice of Opportunity to Request a Hearing

37. If Respondent contests any material fact alleged in this Complaint or the appropriateness of any penalty amount, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must specifically make the request in its Answer, as discussed below.

Answer

38. Respondent must file a written Answer to this Complaint if Respondent contests any material fact of the Complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified below.

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

39. Respondent must send a copy of its Answer and copies of all other documents that Respondent files in this action to :

Jeffrey Trevino
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

40. If Respondent chooses to file a written Answer to the Complaint, it must do so within 30 calendar days after receiving the Complaint. 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.

41. 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.

42. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

43. 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.

44. 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.

45. In addition, a default penalty is subject to interest, penalty and handling charges as set forth in the Federal Claims Collection Act, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. After 30 days, U.S. EPA will impose a late payment handling charge of \$15 for each 30-day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six percent, per year penalty on any principal amount not paid within 90 days of the effective date of the default order.

Settlement Conference

46. 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:

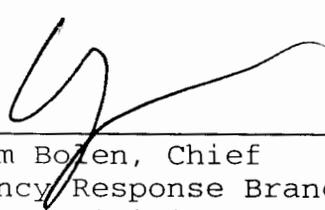
Ruth McNamara
Office of Chemical Emergency Preparedness
and Prevention (SC-6J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 353-3193

47. 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.

48. U.S. EPA encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through informal conference. However, U.S. EPA will not reduce the penalty simply because the parties hold an informal settlement conference.

Date: _____

4/9/07



William Bozen, Chief
Emergency Response Branch 1
Superfund Division
U.S. EPA Region 5

RECORDED
7/10/07 12:53 PM
QUEST

Re: SuperClean Brands, Inc., dba Fox Packaging Company
 St. Paul, Minnesota
 Docket Number: EPCRA-05-2007-0013

Certificate of Service

I, Ruth McNamara, certify that I filed the original and one copy of the Administrative Complaint, docket number EPCRA-05-2007-0013 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 Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, 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:

Jeffrey K. Thomas
 Corporate Counsel
 SuperClean Brands Inc.
 2855 Eagandale Blvd.
 Eagan, MN 55121

on the 13th day of April, 2007.

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

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