



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

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

RECEIPT NO. 7007 0710 0003 4408 7592

Kevin Grant, President  
Electro-Max, Inc.  
105 N. Rowell Road  
Hampshire, Illinois 60140

In the Matter of: Electro-Max, Inc., Docket No. **EPCRA-05-2008-0015**

Dear Mr. Grant:

I have enclosed the Complaint filed by the United States Environmental Protection Agency (U.S. EPA), Region 5, against Electro-Max, Inc. under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c).

As provided in the Complaint, if you wish 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 (E-13J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604 within 30 days of your receipt of this Complaint, a default order may be issued 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 have your attorney contact Mony Chabria, Associate Regional Counsel at (312) 886-6842.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero, Director  
Land and Chemicals Division

Enclosures

cc: Christopher T. Nowotarski, Stone Pogrund & Korey LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
 )  
Electro-Max, Inc. )  
Hampshire, Illinois, )  
 )  
Respondent. )  
 )

Docket No. EPCRA-05-2008-0015  
Proceeding to Assess a Civil Penalty  
Under Section 325(c) of the Emergency  
Planning and Community Right-to-Know  
Act of 1986, 42 U.S.C. § 11045(c)

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RECEIVED  
REGIONAL HEARING CLERK  
2008 APR 30 AM 10:16

Complaint

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

2. Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Electro-Max, Inc. a corporation doing business in the State of Illinois.

Statutory and Regulatory Background

4. The U.S. EPA promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rule at 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048.

5. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees, is in a Standard Industrial Classification (SIC) codes 20 through 39, and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) and listed at 40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f) and in 40 C.F.R. §§ 372.25, 372.27 and 372.28.

6. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to complete and submit to the Administrator of U.S. EPA and to the state in which the facility is located, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f).

7. The U.S. EPA published the Toxic Chemical Release Inventory Reporting Form, U.S. EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R § 372.85 pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g).

8. All persons required to report pursuant to Section 313(b) must use Form R according to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

9. The Administrator of U.S. EPA may prescribe regulations as may be necessary to carry out EPCRA. 42 U.S.C. § 11048.

10. Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. The U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 that

occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

### **General Allegations**

11. Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
12. Respondent is a corporation doing business in the State of Illinois.
13. Respondent owned or operated a facility located at 105 N. Rowell Road, Hampshire, IL 60140 during the calendar year 2002.
14. 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 by the same person, entity, or corporation.
15. During calendar year 2002, Respondent employed at its facility the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.
16. Respondent’s facility is covered by SIC Code 3471.
17. During calendar year 2002, Respondent produced at least 25,000 pounds of chromium compounds.
18. During calendar year 2002, Respondent produced at least 25,000 pounds of nitrate compounds.
19. During calendar year 2002, Respondent used at least 10,000 pounds of nitric acid.
20. During calendar year 2002, Respondent “manufactured,” as defined by 40 C.F.R. § 372.3, chromium compounds, in quantities exceeding thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.25.
21. During calendar year 2002, Respondent “manufactured,” as defined by 40 C.F.R.

§ 372.3, nitrate compounds, in quantities exceeding thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.25.

22. During calendar year 2002, Respondent “otherwise used,” as defined by 40 C.F.R. § 372.3, nitric acid, in quantities exceeding thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.25.

23. On June 21, 2006, a representative of the U.S. EPA contacted Respondent by telephone to provide notice of an upcoming inspection of Respondent’s facility.

24. By letter dated June 26, 2006, a representative of the U.S. EPA confirmed that he would be conducting an inspection evaluating Respondent’s compliance with Section 313 of EPCRA for calendar year 2002.

25. On July 19, 2006, a representative of the U.S. EPA inspected Respondent’s facility.

#### **Count I**

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

27. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is manufactured during the 2002 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

28. During the 2002 calendar year, Respondent’s facility manufactured 26,056 pounds of chromium compounds, a chemical category.

29. Chromium compounds are a group of chemicals identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and a chemical category listed at 40 C.F.R. § 372.65(c).

30. Chromium compounds are a “toxic chemical,” as defined by 40 C.F.R. § 372.3.

31. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the

Administrator of U.S. EPA and to the State of Illinois a Form R for chromium compounds for the 2002 calendar year on or before July 1, 2003.

32. Respondent failed to submit to the Administrator of U.S. EPA a Form R for chromium compounds for the 2002 calendar year on or before July 1, 2003.

33. Respondent has not submitted to the Administrator of U.S. EPA a Form R for chromium compounds for the 2002 calendar year.

34. Respondent's failure to submit timely to the Administrator of U.S. EPA a Form R for chromium compounds for the 2002 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

### **Count II**

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

36. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is otherwise used during the 2002 calendar year is 10,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(b).

37. During the 2002 calendar year, Respondent's facility otherwise used 34,680 pounds of nitric acid, CAS No. 7697-37-2.

38. Nitric acid is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

39. Nitric acid is a "toxic chemical," as defined by 40 C.F.R. § 372.3.

40. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for nitric acid for the 2002 calendar year on or before July 1, 2003.

41. Respondent failed to submit to the Administrator of U.S. EPA a Form R for nitric acid for the 2002 calendar year on or before July 1, 2003.

42. On June 30, 2006, Respondent submitted to the Administrator of U.S. EPA a Form R for nitric acid for the 2002 calendar year.

43. Respondent's failure to submit timely to the Administrator of U.S. EPA a Form R for nitric acid for the 2002 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

### Count III

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

45. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is manufactured during the 2002 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

46. During the 2002 calendar year, Respondent's facility manufactured 36,741 pounds of nitrate compounds, a chemical category.

47. Nitrate compounds are a group of chemicals identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and a chemical category listed at 40 C.F.R. § 372.65(c).

48. Nitrate compounds are a "toxic chemical," as defined by 40 C.F.R. § 372.3.

49. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for nitrate compounds for the 2002 calendar year on or before July 1, 2003.

50. Respondent failed to submit to the Administrator of U.S. EPA a Form R for nitrate compounds for the 2002 calendar year on or before July 1, 2003.

51. On June 30, 2006, Respondent submitted to the Administrator of U.S. EPA a Form R for nitrate compounds for the 2002 calendar year.

52. Respondent's failure to submit timely to the Administrator of U.S. EPA a Form R for nitrate compounds for the 2002 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

**Proposed Penalty**

53. Complainant proposes that the Administrator assess a civil penalty against Respondent for the EPCRA violations alleged in this Complaint as follows:

**Count I**

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for chromium compounds for calendar year 2002:

Chemical category.....\$5,500

**Count II**

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for nitric acid for calendar year 2002:

CAS No. 7697-37-2.....\$5,500

**Count III**

Failure to submit timely a Toxic Chemical Release Inventory Reporting Form for nitrate compounds for calendar year 2002:

Chemical category.....\$5,500

**Total Proposed Civil Penalty.....\$16,500**

Complainant has determined the proposed civil penalty according to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). In determining the proposed penalty amount, Complainant



considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)(amended)*(April 12, 2001), 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* (the Consolidated Rules), 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 Mony Chabria, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Chabria at (312) 886-6842. His address is:

Mony Chabria (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 payable to the "Treasurer, United States of America," to:

U.S. EPA  
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 Mony Chabria at the addresses given above, and to:

Robert J. Allen (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

**Answer and Opportunity to Request a Hearing**

If Respondent contests any material fact upon which the Complaint is based 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 Mony Chabria at (312) 886-6842.

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 both 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 an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

### **Continuing Obligation to Comply**

Respondent's payment of the civil penalty will not satisfy Respondent's legal obligation to file a complete and accurate Form R for each year that Respondent manufactured, processed, or otherwise used a toxic chemical identified in this Complaint in a quantity exceeding the threshold for reporting. Whether Respondent chooses to pay the proposed penalty, request a hearing, or settle this case, Respondent is still legally required to submit complete and accurate Form Rs to both:

EPCRA Reporting Center  
P.O. Box 1513  
Lanham, MD 20703 1513  
Attn: Toxic Chemical Release Inventory

Dierdre McQuillen  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

Continued failure to file a Form R may subject Respondent to additional civil penalties of up to \$32,500 per day of violation.

6/27/08

Date



Margaret M. Guerriero, Director  
Land and Chemicals Division

**EPCRA-05-2008-0015**

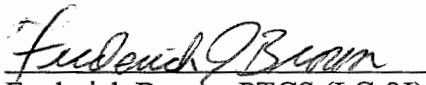
**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Complaint involving Electro-Max, Inc., of Hampshire, Illinois was filed on June 30, 2008, with the Regional Hearing Clerk (E-13J), U. S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7007 0710 0003 4408 7592, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Enforcement Response Policy For Section 313 of Emergency Planning Community Right-To-Know Act (1986) and Section 6607 of The Pollution Prevention Act(1990)" to:

Kevin Grant, President  
Electro-Max, Inc.  
105 N. Rowell Road  
Hampshire, Illinois 60140

with intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Mony Chabria, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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