



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

5 Post Office Square, Suite 100  
Boston, MA 02109-3912

July 28, 2011

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

BY HAND

Re: In the Matter of John R. Hess & Company, Inc.  
EPCRA-01-2011-0035

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint and Opportunity to Request a Hearing.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maximilian Boal".

Maximilian Boal  
Enforcement Counsel

Enclosure

cc: John R. Hess III, CEO of John R. Hess & Company, Inc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

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In the Matter of: ) )  
 ) )  
John R. Hess & Company, Inc. ) )  
400 Station Street ) )  
Cranston, RI 02910 ) )  
 ) )  
Respondent. ) )  
\_\_\_\_\_)

Docket No. EPCRA-01-2011-0035

**ADMINISTRATIVE COMPLAINT  
AND  
NOTICE OF  
OPPORTUNITY FOR HEARING**

**STATUTORY AND REGULATORY BASIS**

This is a civil administrative action under the authority of Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter “EPCRA”), and the Consolidated Rules of Practice Governing the 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 (“Part 22”). The Complaint is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or “Complainant”). This Complaint alleges that John R. Hess & Company, Inc. (“Respondent”) failed to submit timely, complete, and correct Toxic Chemical Release Inventory Reporting Forms, as required by Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations that set out in greater detail the Section 313 reporting requirements, 40 C.F.R. Part 372.

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

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(b) must prepare and submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting 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 toxic chemical 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 the Administrator of EPA and to the state in which the subject facility is located.

Section 313(b) of EPCRA, 42 U.S.C. §11023(b), and 40 C.F.R. § 372.22 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification (“SIC”) code or North American Industry Classification System (“NAICS”) code set forth in 40 C.F.R. § 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 to submit a TRI Form 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 40 C.F.R. § 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 reporting option is not available for all chemicals. Hereinafter, Form As and Form Rs collectively shall be referred to as “TRI Form(s).”

Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, provides that any person who violates any requirement of Section 313 after March 15, 2004 and on or before January 12, 2009 shall be liable to the United States for a civil penalty not to exceed \$32,500 per day for each such violation, and any person who violates any requirement of Section 313 after January 12, 2009 shall be liable to the United States for a civil penalty not to exceed \$37,500 per day for each such violation.

#### **GENERAL ALLEGATIONS AND STATEMENT OF FACTS**

1. Respondent is a corporation incorporated under the laws of the State of Rhode Island with a usual place of business at 400 Station Street, Cranston, RI 02910.
2. Respondent owns and operates a facility that processes, distributes, and repackages chemicals (the “Facility”), located at 400 Station Street, Cranston, RI 02910.
3. On or about June 30, 2010, authorized employees of the EPA inspected Respondent’s Facility. The purpose of the inspection was to determine Respondent’s compliance with EPCRA Section 313 reporting requirements.
4. Respondent is a “person,” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
5. Respondent is the owner or operator of 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.

6. The Facility has 10 or more “full-time employees,” as that term is defined by 40 C.F.R. § 372.3.

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

8. During the calendar years 2007 and 2008, Respondent manufactured, processed, or otherwise used toxic chemicals listed under 40 C.F.R. § 372.65 in quantities exceeding the established thresholds.

9. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to Respondent’s Facility.

#### COUNT I

10. Complainant re-alleges paragraphs 1 through 9.

11. During the calendar year 2007, Respondent manufactured, processed, or otherwise used certain glycol ethers, a chemical category listed under 40 C.F.R. § 372.65(c), in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI form for this chemical category on or before July 1, 2008.

12. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2008.

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

#### COUNT II

14. Complainant re-alleges paragraphs 1 through 13.

15. During the calendar year 2008, Respondent manufactured, processed, or otherwise used certain glycol ethers, a chemical category listed under 40 C.F.R. § 372.65(c), in a

quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI form for this chemical category on or before July 1, 2009.

16. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2009.

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

### COUNT III

18. Complainant re-alleges paragraphs 1 through 17.

19. During the calendar year 2007, Respondent manufactured, processed, or otherwise used ethylene glycol, 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, 2008.

20. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2008.

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

### COUNT IV

22. Complainant re-alleges paragraphs 1 through 21.

23. During the calendar year 2007, Respondent manufactured, processed, or otherwise used N-methyl-2-pyrrolidone, 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, 2008.



24. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2008.

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

#### COUNT V

26. Complainant re-alleges paragraphs 1 through 25.

27. During the calendar year 2008, Respondent manufactured, processed, or otherwise used N-methyl-2-pyrrolidone, 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, 2009.

28. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2009.

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

#### PROPOSED PENALTIES

30. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. § 372.18, as amended by 40 C.F.R. Part 19, provide that any person who violates any requirement of Section 313 after March 15, 2004 and on or before January 12, 2009 shall be liable to the United States for a civil penalty not to exceed \$32,500 per day for each such violation, and any person who violates any requirement of Section 313 after January 12, 2009 shall be liable to the United States for a civil penalty not to exceed \$37,500 per day for each such violation. Failure to report in a timely manner, as required by Section 313, may deprive the community of its right to know about chemicals used or stored near or in the neighborhood that may affect public health and the

environment, compromise the validity of health studies based on consequently inaccurate databases, and prevent comprehensive planning by federal, state, and local authorities to clean up industrial pollution.

31. The proposed civil penalty has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). For purposes of determining the amount of any penalty to be assessed, EPA considers the nature, circumstances, extent, and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to 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)" [April 12, 2001] ("ERP"), a copy of which is enclosed with this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

32. The ERP states that a gravity-based penalty should be determined by considering the "circumstance level" and the "extent level" of a violation. The circumstance level of a violation takes into account the seriousness of the violation as it relates to the accuracy and availability of the information to the community, states, and federal government. The extent level of a violation is based upon the quantity of each EPCRA Section 313 chemical manufactured, processed, or otherwise used by the facility, and the size of the facility, which is based upon the number of employees and the gross sales of the violating facility. The ERP also



allows other adjustments to the penalty if a violation is voluntarily disclosed, the facility has a prior violation, or the subject chemical has been delisted.

33. On the basis of the above variables, the Regional Administrator has determined the amount of the civil penalty to be assessed against Respondent. As described below, this penalty was computed by using a multiple stage process in accordance with the ERP.

34. The first stage requires the determination of the circumstance level of the violation. Respondent failed to submit, within one year of the July 1 due date, a TRI form for calendar year 2007 for certain glycol ethers, ethylene glycol, and N-methyl-2-pyrrolidone, chemicals listed under 40 C.F.R. § 372.65, that it manufactured, processed, or otherwise used in quantities exceeding the established threshold. Thus, the applicable circumstance level of Counts I, III, and IV of this Complaint is "Level 1." For calendar year 2008, Respondent filed the TRI form for certain glycol ethers and N-methyl-2-pyrrolidone less than one year late, or 362 days after the July 1, 2009 due date. The proposed penalty for Counts II and V was therefore calculated in accordance with the Level 4 per-day formula for failure to report in a timely manner set forth in the ERP. (Note that the penalty matrix for 2009 violations reflects the inflation adjustment over 2008 violations set forth in 40 C.F.R. Part 19.)

35. The second stage in calculating the proposed penalty requires the determination of the extent level. Respondent manufactured, processed, or otherwise used less than ten times the threshold of Section 313 chemicals. In addition, Respondent has less than ten million dollars in total corporate sales and less than fifty employees at the violating facility. Based upon the amount of the Section 313 chemicals used and the size and sales of the company entity, the applicable extent level for Counts I, II, III, IV, and V of this Complaint is "Level C."

36. In addition to the determination of the applicable circumstance and extent levels for each count in this Complaint, Complainant considered other factors which may be used to adjust the penalty amount. In particular, after considering Respondent's failure to voluntarily disclose the violations, its lack of a history of prior violations, and the subject chemicals not having been delisted, Complainant proposes no further adjustments to the gravity-based penalty amount. Note, however, that the proposed penalty is based upon the best information available to EPA at this time, and may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

37. Based upon the foregoing factors, Complainant proposes that Respondent be assessed a civil penalty in the amount of thirty-three thousand four hundred dollars (\$33,400) for the violations alleged in this Complaint. For each violation, the proposed penalty is as follows:

- a. Count I: \$6,448
- b. Count II: \$7,028
- c. Count III: \$6,448
- d. Count IV: \$6,448
- e. Count V: \$7,028

#### **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

In accordance with 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and having the above-cited penalty assessed

without further proceedings, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense, and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100 (ORA18-1)  
Boston, MA 02109-3912

Respondent should also send a copy of the Answer and all other documents which Respondent files in this action to Maximilian Boal, the attorney assigned to represent EPA in this matter, at:

Maximilian Boal  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100 (OES04-2)  
Boston, MA 02109-3912

If Respondent fails to file a timely answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations.



## INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with EPA concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. Respondent or its attorney is encouraged to contact Maximilian Boal, Enforcement Counsel, at (617) 918-1750, to discuss this matter or to arrange an informal settlement conference.

Please note that a request for an informal settlement conference does not lengthen the thirty-day period within which a written Answer must be submitted to avoid default.

Payment of the civil penalty alone does not satisfy Respondent's legal obligation to file complete and accurate TRI Forms. If Respondent chooses to remit the proposed penalty, it is still under a legal duty to submit complete and accurate TRI Forms. Failure or refusal to file such forms may subject Respondent to additional civil penalties of up to \$37,500 per day of violation.

Maximilian Boal, Enforcement Counsel, at the above address and telephone number, has been designated to represent the Complainant and is authorized to receive service of process in this action.

7/27/11  
Date

Joanna Jerison  
Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region I

**In the Matter of John R. Hess & Company, Inc.**  
**EPCRA-01-2011-0035**

**CERTIFICATE OF SERVICE**

I certify that the foregoing Compliant was transmitted to the following persons, in the manner specified, on the date below:


Original and one copy  
hand-delivered:

Wanda Santiago,  
Regional Hearing Clerk  
U.S. EPA – Region I  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

Copy and copy of Part 22 Rules and  
EPCRA Section 313 ERP  
by certified mail, return receipt  
requested:

John R. Hess III, CEO  
John R. Hess & Company, Inc.  
P.O. Box 3615  
400 Station Street  
Cranston, RI 02910-2932

Dated: July 28, 2011

  
\_\_\_\_\_  
Maximilian Boal  
Enforcement Counsel  
U.S. EPA – Region I  
5 Post Office Square, Suite 100  
Mail Code: OES04-2  
Boston, MA 02109-3912  
(617) 918-1750