

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

<b>In the Matter of:</b>	)	<b>EPA Docket No. EPCRA-03-2009-</b>
<b>Krisp-Pak Company, Inc.</b>	)	<b>0111</b>
<b>835 Southampton Avenue</b>	)	
<b>Norfolk, Virginia 23510,</b>	)	
	)	
<b>Respondent,</b>	)	
	)	
<b>Krisp-Pak Company, Inc.</b>	)	<b>Administrative Complaint and Notice</b>
<b>835 Southampton Avenue</b>	)	<b>of Opportunity for Hearing filed</b>
<b>Norfolk, Virginia 23510,</b>	)	<b>under Sections 312 and 325 of the</b>
	)	<b>Emergency Planning and Community</b>
	)	<b>Right-to-Know Act, 42 U.S.C.</b>
<b>Facility.</b>	)	<b>§§ 11022 and 11045.</b>

**ADMINISTRATIVE COMPLAINT**

This Administrative Complaint and Notice of Opportunity for a Hearing (hereinafter "Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, delegated to the Regional Administrator by EPA Delegation No. 22-3-A, and redelegated to Complainant by EPA Region III Delegation No. 22-3-A. Further, this Complaint is being filed pursuant to 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 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, a copy of which is enclosed with this Administrative Complaint as Attachment A.

The Complainant is the Director of the Hazardous Site Cleanup Division for the EPA Region III office. The Respondent is Krisp-Pak Company, Inc. Respondent is hereby notified of EPA's intention to assess penalties for violations of the requirements and prohibitions of Section 312 of EPCRA, 42 U.S.C. § 11022, and its implementing regulations, 40 C.F.R. Part 370. The Complaint describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

In support of its Complaint, Complainant alleges the following:

**GENERAL ALLEGATIONS**

1. Respondent, Krisp-Pak Company, Inc. ("Krisp-Pak"), is a Virginia corporation with its principal place of business located at 835 Southampton Avenue, Norfolk, Virginia 23510.

2. Respondent Krisp-Pak operates a vegetable-processing facility located at 835 Southampton Avenue, Norfolk, Virginia 23510, (the "Facility"), with SIC Codes of 5148 (fresh fruits and vegetables merchants wholesalers) and 2099 (food preparations, not elsewhere classified), and NAICS Codes of 424480 (fresh fruits and vegetables merchants wholesalers) and 311991 (perishable prepared food manufacturing).

3. At all times relevant to this Complaint, Respondent has used ammonia (CAS No. 7664-41-7) in the Facility's refrigeration system.

4. On March 26, 2008, EPA conducted an inspection of the Facility to evaluate the Facility's compliance with Sections 302, 303, 311 and 312 of EPCRA.

**COUNT I - VIOLATION OF SECTION 312 OF EPCRA**  
**CALENDAR YEAR 2007 – STATE EMERGENCY RESPONSE COMMISSION**

5. The allegations contained in Paragraphs 1 through 4 of the Complaint are incorporated by reference herein as though fully set forth at length.

6. As a corporation, Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and its regulations, 40 C.F.R. § 370.2.

7. At all times relevant to this Complaint, the Facility was a facility at which a hazardous chemical, ammonia, was produced, used or stored.

8. Section 312 of EPCRA, 42 U.S.C. § 11022, requires the owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical in accordance with the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous substance ("EHS")) is present at any one time in a quantity equal to or greater than its applicable minimum threshold for reporting established by 40 C.F.R. § 370.20(b) (the "threshold"), to submit on or before March 1, 1988, and by March 1<sup>st</sup> of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical and providing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate State Emergency Response Commission ("SERC"), Local Emergency Planning Committee ("LEPC"), and Local Fire Department with jurisdiction over the facility.

9. The SERC for the Facility is the Virginia Department of Environmental Quality, Virginia Emergency Response Council, located at 629 East Main Street, Mezzanine Level, in Richmond, Virginia.

10. Ammonia is a "hazardous chemical" as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and an EHS as defined in Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 370.2, and as listed in 40 C.F.R. Part 355, Appendices A and B.

11. Respondent is an "employer" as that term is defined at 29 U.S.C. § 1910.1200(c).

12. Respondent is the owner or operator of a facility that is required to prepare or have available an MSDS for hazardous chemicals under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

13. Pursuant to 40 C.F.R. § 370.20(b)(1), the reporting threshold for ammonia (CAS No. 7664-41-7) is 500 pounds.

14. Upon information and belief, during calendar year 2007, Respondent has had present at the Facility 2,000 pounds of ammonia.

15. At any one time during calendar year 2007, Respondent had present at the Facility the hazardous chemical ammonia in a quantity exceeding its threshold.

16. By March 1, 2008, Respondent was required to submit to the SERC, LEPC, and the Local Fire Department, an Emergency and Hazardous Chemical Inventory Form identifying the extremely hazardous chemical ammonia as present at the Facility during calendar year 2007 in a quantity greater than its threshold and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the hazardous chemical.

17. Respondent did not submit to the SERC by March 1, 2008 an Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical ammonia as present at the Facility in a quantity greater than its threshold at any one time during calendar year 2007 and providing the required information concerning the hazardous chemical, as required by Section 312 of EPCRA, 42 U.S.C. § 11022.

18. Respondent's failure to submit to the SERC, by March 1, 2008, an Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical ammonia as present at the Facility in a quantity greater than its threshold at any one time during calendar year 2007 and providing the required information concerning the hazardous chemical, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT II - VIOLATION OF SECTION 312 OF EPCRA**  
**CALENDAR YEAR 2007 - LOCAL FIRE DEPARTMENT**

19. The allegations contained in Paragraphs 1 through 18 of the Complaint are incorporated by reference herein as though fully set forth at length.

20. The Local Fire Department for the Facility is the Norfolk Fire Department, located at 100 Brooke Avenue, #500, in Norfolk, Virginia.

21. Respondent did not submit to the Local Fire Department by March 1, 2008, an Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical ammonia as present at the Facility in a quantity greater than its threshold at any one time during calendar year 2007 and providing the required information concerning the hazardous chemical, as required by Section 312 of EPCRA, 42 U.S.C. § 11022.

22. Respondent's failure to submit to the Local Fire Department, by March 1, 2008, an Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical ammonia as present at the Facility in a quantity greater than its threshold at any one time during calendar year 2007 and providing the required information concerning the hazardous chemical, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT III - VIOLATION OF SECTION 312 OF EPCRA -**  
**CALENDAR YEAR 2006**

23. The allegations contained in Paragraphs 1 through 22 of the Complaint are incorporated by reference herein as though fully set forth at length.

24. Upon information and belief, during calendar year 2006, Respondent had present at its Facility 2,000 pounds of ammonia.

25. By March 1, 2007, Respondent was required to submit to the SERC, LEPC, and Local Fire Department, an Emergency and Hazardous Chemical Inventory Form identifying ammonia as present at the Facility during calendar year 2006 in a quantity greater than its threshold, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the hazardous chemical.

26. Respondent failed to submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2006 to the SERC by March 1, 2007, identifying the hazardous chemical, ammonia, as present at the Facility in a quantity greater than its threshold at any one time during calendar year 2006, and providing the required information concerning the hazardous chemical.

27. Respondent failed to submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2006 to the Local Fire Department by March 1, 2007,

identifying the hazardous chemical, ammonia, as present at the Facility in a quantity greater than its threshold at any one time during calendar year 2006, and providing the required information concerning the hazardous chemical.

28. Respondent's failure to submit to the SERC and Local Fire Department by March 1, 2007, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical, ammonia, as present at the Facility in a quantity greater than its threshold at any one time during calendar year 2006, and providing the required information concerning the hazardous chemical, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT IV - VIOLATION OF SECTION 312 OF EPCRA-**  
**CALENDAR YEAR 2005**

29. The allegations contained in Paragraphs 1 through 28 of the Complaint are incorporated by reference herein as though fully set forth at length.

30. Upon information and belief, during calendar year 2005, Respondent had present at the Facility 2,000 pounds of ammonia.

31. By March 1, 2006, Respondent was required to submit to the SERC, LEPC, and Local Fire Department, an Emergency and Hazardous Chemical Inventory Form identifying ammonia as present at the Facility during calendar year 2005 in a quantity greater than its threshold, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the hazardous chemicals.

32. Respondent failed to submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2005 to the SERC, identifying the hazardous chemical, ammonia, as present at the Facility in a quantity greater than its threshold at any one time during calendar year 2005, and providing the required information concerning the hazardous chemical.

33. Respondent failed to submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2005 to the Local Fire Department, identifying the hazardous chemical, ammonia, as present at the Facility in a quantity greater than its threshold at any one time during calendar year 2005, and providing the required information concerning the hazardous chemical.

34. Respondent's failure to submit to the SERC and Local Fire Department by March 1, 2006, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical, ammonia, present at the Facility in a quantity greater than its threshold at any one time during calendar year 2005, and providing the required information concerning the chemical, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

## PROPOSED EPCRA PENALTY

Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), authorizes EPA to assess a penalty not to exceed \$25,000.00 per violation of Section 304 of EPCRA, 42 U.S.C. § 11004. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, EPA may assess a penalty not to exceed \$25,000.00 per violation. Pursuant to the Debt Collection Improvement Act of 1996 (“DCIA”) and the subsequent Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, (Feb. 13, 2004), codified at 40 C.F.R. Part 19, (collectively referred to as the “Penalty Inflation Rule”), copies of which are enclosed with this Administrative Complaint as Attachment, violations of Section 312 of EPCRA, 42 U.S.C. § 11022, which occur after March 15, 2004, are subject to a statutory maximum penalty of \$32,500.00 per violation. In the case of a second or subsequent violation occurring between March 15, 2004 and January 12, 2009, the amount of such penalty may not be more than \$97,500.00 for each day during which the violation continues.

Civil penalties under Section 325(b) and (c) of EPCRA, 42 U.S.C. § 11045(b) and (c), may be assessed by Administrative Order and are to be assessed and collected in the same manner, and subject to the same provisions, as in the case of penalties assessed and collected after notice and opportunity for hearing on the record in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.

To develop the penalty proposed in this Complaint, Complainant has taken into account the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such matters as justice may require, with specific reference to 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 (“ERP”), appended as Attachment C. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty authorities described above to particular cases.

On the basis of the violations of EPCRA described above, Complainant has determined that Respondent is subject to penalties for violations of Section 312 of EPCRA, 42 U.S.C. § 11022. Accordingly, Complainant proposes a civil penalty in the amount of **\$19,122.00** pursuant to the authority of Section 325 of EPCRA, 42 U.S.C. § 11045, as set forth below. This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

**Count I:** Failure to submit to the SERC by March 1, 2008, an Emergency and Hazardous Chemical Inventory Form identifying, and providing information concerning ammonia present at the Facility

in calendar year 2007, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25 <b>Extent Level 1, Gravity Level C</b>	<b>\$8,061.00</b>
<b>Count II:</b> Failure to submit to the local Fire Department by March 1, 2008, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying, and providing information concerning ammonia present at the Facility in calendar year 2007, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25 <b>Extent Level 1, Gravity Level C</b>	<b>\$8,061.00</b>

**Base Penalty Calculation:**

*Nature of Violation* - The violations alleged in Counts I and II of the Complaint address community right-to-know matters and concerns. The violations had a deleterious effect upon the reporting system under EPCRA, which is intended and designed to enable federal, state, and local governmental entities to properly plan for chemical releases at and from facilities in their communities, and the public's ability to access information concerning hazardous chemicals and EHSs that are stored or otherwise present in their communities. The violations, therefore, pose a potential for harm not only to the EPCRA regulatory system, but also to the protection of the environment and human health.

*Extent Level* - The Extent Level for the violation as alleged in Count I of the Complaint is Level 1 due to Respondent's failure to submit to the SERC any Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical ammonia present at the Facility in calendar year 2007. The Extent Level for the violation as alleged in Count II of the Complaint is Level 1 due to Respondent's failure to submit to the Local Fire Department any Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical ammonia present at the Facility in calendar year 2007.

*Gravity Level* - The Gravity Level for Respondent's violation as alleged in Count I of the Complaint is Level C due to the fact Respondent did not submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2007 to the SERC and the amount of ammonia present at the Facility was four times the reporting threshold. The Gravity Level for Respondent's violation as alleged in Count II of the Complaint is Level C due to the fact that Respondent did not submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2007 to the Local Fire Department and the amount of ammonia present at the Facility was four times the reporting threshold.

*Base Proposed Penalty Total* - In light of the Penalty Inflation Rule, and the fact that the violation as alleged in Counts I through II of the Complaint occurred after March 15, 2004, an Extent Level of 1 and Gravity Level of C for the violations as

alleged in Count I, and an Extent Level of 1 and Gravity Level of C for the violations as alleged in Count II of the Complaint results in a Base Penalty of **\$16,122.00**.

**Multi-Day Penalty:** In light of the facts of the action at bar, EPA in its enforcement discretion is not seeking imposition of a multi-day penalty against Respondent for the violations alleged in Counts I through II of the Complaint.

**Proposed Penalty – Counts I – II:** \$16,122.00

**Count III:** Failure to submit to the SERC and Local Fire Department by March 1, 2007 an Emergency and Hazardous Chemical Inventory Form identifying, and providing information concerning the hazardous chemical present at the Facility in calendar year 2006, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25

<b>Past Year</b>	<b>\$ 1,500.00</b>
<b><u>Count IV:</u></b>	Failure to submit to the SERC and Local Fire Department by March 1, 2006 an Emergency and Hazardous Chemical Inventory Form identifying, and providing information concerning the hazardous chemical present at the Facility in calendar year 2005, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25

Pursuant to Section VI (Past Year Violations of Section 312 of EPCRA) of the September 30, 1999 *ERP*, Complainant seeks imposition of a flat penalty of \$1,500.00 per year for the violations of Section 312 of EPCRA concerning the hazardous chemicals present at the Facility in calendar year 2006 and calendar year 2005 and for which Respondent failed to submit complete and accurate Emergency and Hazardous Chemical Inventory Forms to the SERC and Local Fire Department by March 1, 2007, and March 1, 2006, respectively.

**Proposed Penalty - Counts III and IV:** \$3,000.00.

**TOTAL PROPOSED EPCRA PENALTIES:** **\$19,122.00**

EPA will consider, among other factors, Respondent's ability to pay to adjust the proposed civil penalty assessed in this Administrative Complaint. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of this Administrative Complaint become known after issuance of the Complaint, such facts

and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in this Complaint.

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Respondent may request, within thirty (30) days of receipt of this Complaint, a hearing before an EPA Administrative Law Judge on the Complaint and at the hearing may contest any material fact and the appropriateness of any penalty amount. To request a hearing, Respondent must file a written Answer within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer should also contain: 1) the circumstances or arguments which are alleged to constitute the grounds of any defense; 2) the facts which Respondent disputes; the basis for opposing any proposed relief; and 3) whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of that allegation.

**If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and waiver of the right to a hearing. Failure to file an Answer shall result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.**

Any hearing requested by Respondent shall be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is provided as Attachment A. Respondent must send any request for a hearing to:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to Cynthia T. Weiss, the attorney assigned to represent EPA in this matter, at:

Cynthia T. Weiss (3RC42)  
Senior Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2659

Respondent's rights to appeal an Order assessing an EPCRA penalty are set forth in 40 C.F.R. § 22.30 and in Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1), which provides in relevant part that:

Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator.

### **QUICK RESOLUTION**

In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's prehearing exchange. If Respondent pays the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to Cynthia T. Weiss (3RC42), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations and to appeal the final order.

Payment of the EPCRA penalty shall be made by sending a cashier's check made payable to the "United States Treasury." If the payment of the EPRCA penalty is sent via regular or US Postal Service express mail, the payment should be mailed to:

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

If the payment of the EPCRA penalty is sent via FedEx or other non-US Postal Service express mail, the payment should be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson (314-418-4087)

Payment may be made by wire transfer/EFT to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
“D 68010727 Environmental Protection Agency”)

Payment may be made via Automated Clearing House (ACH) Transfers for receiving U.S. currency (also known as REX or remittance express) to:

PNC Bank  
ABA = 051036706  
U.S. Environmental Protection Agency  
Account 310006  
CTX Format  
Transaction Code 22 - checking  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact for ACH: Jessie White 301 887-6548

The check(s) should reference the name and docket number of this Administrative Complaint. Copies of the check(s) shall be mailed at the same time payment is made to Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Cynthia T. Weiss, Senior Assistant Regional Counsel (3RC42), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

**SETTLEMENT CONFERENCE**

Whether or not Respondent requests a hearing, an informal conference may be requested to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please write to or telephone:

Cynthia T. Weiss (3RC42)  
Senior Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2659

Please note that a request for, the scheduling of, or the participation in, an informal settlement conference does not extend the thirty (30) day period during which a written Answer and Request for Hearing must be submitted as set forth above. The informal settlement conference procedure, however, may be pursued simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties against whom a civil penalty is proposed to pursue settlement through an informal conference. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties and incorporated into a Final Order signed by the Regional Administrator or his designee. SETTLEMENT CONFERENCES SHALL NOT AFFECT THE REQUIREMENT TO FILE A TIMELY ANSWER TO THE COMPLAINT.

**SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: 1) The Region III Office of Regional Counsel; 2) the Region III Hazardous Site Cleanup Division; 3) the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response; and 4) the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, shall have any ex parte communication with the EPA trial staff or the Respondent on the merits of any issues involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer, after issuance of a Complaint.

**ATTACHMENTS**

- A. 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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22
- B. Debt Collection Improvement Act of 1996 (“DCIA”) and subsequent Civil Monetary Penalty Inflation Adjustment Rule, 69 *Federal Register* 7121 (February 13, 2004), codified at 40 C.F.R. Part 19 (“Penalty Inflation Rule”)
- C. *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 (“ERP”).
- D. Detailed Summary of Proposed Penalties

**GENERAL PROVISIONS**

Issuance of this Complaint shall not constitute or be construed as a waiver by EPA of its rights against Respondent, including but not limited to the right to expend and recover funds under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, ("CERCLA"), to bring enforcement actions under Section 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6973, to address releases and to require further action as necessary to respond to any releases.

3/16/09  
DATE

  
\_\_\_\_\_  
Complainant  
James J. Burke, Director  
Hazardous Site Cleanup Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

<b>In the Matter of:</b>	)	<b>EPA Docket No.EPCRA-03-2009-0111</b>
<b>Krisp-Pak Company, Inc.</b>	)	
<b>835 Southampton Avenue</b>	)	
<b>Norfolk, VA 23510,</b>	)	
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<b>Respondent,</b>	)	
	)	<b>Administrative Complaint and Notice</b>
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<b>Norfolk, Virginia 23510,</b>	)	<b>Emergency Planning and Community</b>
	)	<b>Right-to-Know Act, 42 U.S.C.</b>
<b>Facility.</b>	)	<b>§§ 11022 and 11045.</b>
	)	

**CERTIFICATE OF SERVICE**

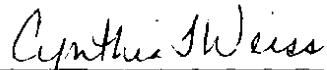
I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant's, the United States Environmental Protection Agency's, Administrative Complaint and Notice of Opportunity for a Hearing, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Administrative Complaint and Notice of Opportunity for a Hearing, along with its enclosures and/or attachments, were sent by certified mail, return receipt requested, to:

Mr. Paul Battaglia, President  
Krisp-Pak Company, Inc.  
835 Southampton Avenue  
Norfolk, Virginia 23501

MAR 17 2009

---

Date



Cynthia T. Weiss (3RC42)  
Senior Assistant Regional Counsel  
Counsel for Complainant  
(215) 814-2659