



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET, SUITE 1100
BOSTON, MA 02114-2023

Reply to: (617) 918-1869
Fax: (617) 918-1809
Mail Code: SEL

September 8, 2010

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

SEP 13 2010

EPA ORC
Office of Regional Hearing Clerk

Re: Highway Safety Corporation d/b/a Connecticut Galvanizing
EPA Docket No. EPCRA-01-2010-0041

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity to Request a Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

Amelia Welt Katzen
Senior Enforcement Counsel

Enclosures

cc: Frank Luszcz, Highway Safety Corporation
Chris Rascher, OES, EPA Region 1



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REGION I

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In the Matter of:

HIGHWAY SAFETY CORPORATION)
d/b/a)
CONNECTICUT GALVANIZING)
239 Commerce Street)
Glastonbury, Connecticut 06033)

EPA Docket Number:
EPCRA-01-2010-0041

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and One Copy,
By Hand:

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

Copy, including 40 C.F.R.
Part 22 and EPCRA Section 313
Enforcement Response Policy,
by Certified Mail, Return Receipt
Requested:

Frank Luszcz, President
Highway Safety Corporation
239 Commerce Street
Glastonbury, CT 06033

Date:

9/8/10



Amelia Welt Katzen, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, Massachusetts 02109-3912
Telephone: (617) 918-1869
Fax: (617) 918-0869

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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SEP 13 2010

EPA ORC
Office of Regional Hearing Clerk

In the Matter of:

HIGHWAY SAFETY CORPORATION

d/b/a

CONNECTICUT GALVANIZING

239 Commerce Street

Glastonbury, Connecticut 06033

Respondent.

EPA Docket Number:
EPCRA-01-2010-0041

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

Proceeding Under Section 325(c) of the
Emergency Planning and Community
Right-to-Know Act.

I. STATEMENT OF AUTHORITY

The United States Environmental Protection Agency ("EPA") issues this Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") pursuant to 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 Complainant is, by lawful delegation, the Legal Enforcement Manager, Office of Environmental Stewardship, EPA Region 1.

The Complaint notifies Highway Safety Corporation d/b/a Connecticut Galvanizing ("Respondent") that EPA is proposing to assess penalties for failing to complete and submit Toxic Chemical Release Inventory Reporting Forms, EPA Form 9350-1 ("Form R"), in violation

of Section 313 of EPCRA, 42 U.S.C. § 11023, and regulations promulgated pursuant to EPCRA at 40 C.F.R. Part 372 that set out in greater detail the Section 313 reporting requirement.

This Complaint also provides notice of Respondent's opportunity to request a hearing on the proposed penalty.

II. APPLICABLE STATUTE AND REGULATIONS

1. 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.

2. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.22, require owners or operators of a facility subject to the requirements of Section 313 to submit annually, no later than July 1 of each year, a "Form R" 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 Form R is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located.

3. 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 Form R for each such substance for that year.

4. Section 325(c) of EPCRA provides for the assessment of penalties for violations of Section 313 of EPCRA.

III. FACTUAL ALLEGATIONS

5. Respondent is a corporation established under the laws of the State of Connecticut, with a principal place of business at 239 Commerce Street, Glastonbury, CT.

6. Respondent operates an unincorporated business unit, known as Connecticut Galvanizing, at 239 Commerce Street, Glastonbury, CT.

7. At all times relevant to the violations alleged in this Complaint, Respondent operated a hot dip galvanizing facility at 239 Commerce Street, Glastonbury, CT ("the Facility").

8. On December 14, 2009, an authorized representative of EPA inspected the Facility to determine Respondent's compliance with EPCRA Section 313 reporting requirements.

9. Respondent is a "person," as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

10. Respondent is an 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.

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

12. The Facility is classified in SIC code 3479, which is included in the SIC and NAICS codes set forth in 40 C.F.R. § 372.23.

13. During calendar years 2006, 2007 and 2008, Respondent manufactured, processed or otherwise used zinc compounds, a category of chemicals listed under 40 C.F.R. § 372.65, in quantities exceeding the regulatory threshold of 25,000 pounds, at the Facility.

14. Accordingly, the requirements of Section 313(a) of EPCRA and 40 C.F.R. Part 372 apply to Respondent's Facility.

IV. VIOLATIONS

Count 1: Failure to File Form R for Zinc Compounds in Calendar Year 2006

15. Paragraphs 1 – 14, inclusive, are incorporated herein by reference as if fully set forth herein.

16. During calendar year 2006, Respondent manufactured, processed or otherwise used zinc compounds, a category of chemicals listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold at the Facility.

17. Respondent was therefore required to complete and submit a Form R for zinc compounds to the Administrator of EPA on or before July 1, 2007.

18. Respondent failed to complete and submit a Form R for zinc compounds to the Administrator of EPA for calendar year 2006 on or before July 1, 2007.

19. Respondent's failure to complete and timely submit a Form R for zinc compounds to the Administrator of EPA for calendar year 2006 constitutes a violation of Section 313(a) of EPCRA and 40 C.F.R. Part 372.

Count 2: Failure to File Form R for Zinc Compounds in Calendar Year 2007

20. Paragraphs 1 – 19, inclusive, are incorporated herein by reference as if fully set forth herein.

21. During calendar year 2007, Respondent manufactured, processed or otherwise used zinc compounds, a category of chemicals listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold at the Facility.

22. Respondent was therefore required to complete and submit a Form R for zinc compounds to the Administrator of EPA on or before July 1, 2008.

23. Respondent failed to complete and submit a Form R for zinc compounds to the Administrator of EPA for calendar year 2007 on or before July 1, 2008.

24. Respondent's failure to complete and timely submit a Form R for zinc compounds to the Administrator of EPA for calendar year 2007 constitutes a violation of Section 313(a) of EPCRA and 40 C.F.R. Part 372.

Count 3: Failure to File Form R for Zinc Compounds in Calendar Year 2008

25. Paragraphs 1 – 24, inclusive, are incorporated herein by reference as if fully set forth herein.

26. During calendar year 2008, Respondent manufactured, processed or otherwise used zinc compounds, a category of chemicals listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold at the Facility.

27. Respondent was therefore required to complete and submit a Form R for zinc compounds to the Administrator of EPA on or before July 1, 2009.

28. Respondent failed to complete and submit a Form R for zinc compounds to the Administrator of EPA for calendar year 2008 on or before July 1, 2009.

29. Respondent's failure to complete and timely submit a Form R for zinc compounds to the Administrator of EPA for calendar year 2008 constitutes a violation of Section 313(a) of EPCRA and 40 C.F.R. Part 372.

V. PROPOSED CIVIL PENALTY

Section 325(c) of EPCRA, 42 U.S.C. §11045(c), and 40 C.F.R. § 372.18, as amended at 40 C.F.R. Part 19, provide that any person who violates any requirement of Section 313 after March 15, 2004 and through January 12, 2009 shall be liable to the United States for a civil penalty in an amount 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 in an amount 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 data bases, and prevent comprehensive planning by federal, state and local authorities to clean up industrial pollution.

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 considered 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) [amended 1996, 1997, and 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.

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.

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

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, Form Rs for calendar years 2006 and 2007 for chemicals listed under 40 CFR § 372.65 that it manufactured, processed or otherwise used in quantities exceeding the established threshold. Thus, the applicable circumstance level for Counts 1 and 2 of this Complaint is "Level 1." For calendar year 2008, Respondent filed the Form R for zinc compounds less than one year late, or 199 days after the July 1 due date. The proposed penalty for Count 3 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.

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 more than ten million dollars in total corporate sales and more than fifty employees at the violating facility. Based upon the amount of the Section 313 chemical used and the size and sales of the company entity, the applicable extent level for Counts 1, 2 and 3 of this Complaint is "Level B."

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.

For each alleged violation cited in Counts 1, 2 and 3 , EPA proposes the following penalty:

Count 1 (2006, zinc compounds – Level 1B):	\$22,000
Count 2 (2007, zinc compounds - Level 1B):	22,000
Count 3 (2008, zinc compounds – Level 4B per-day):	<u>16,963</u>
Total: ¹	\$61,000

¹ The total proposed penalty for EPCRA violations has been rounded to the nearest hundred, in accordance with the ERP.

**VI. 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 herewith.

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:

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

Respondent should also send a copy of the Answer and all other documents that Respondent files in this action to Amelia Welt Katzen, the attorney assigned to represent EPA and authorized to receive service of process in this action, at:

Amelia Welt Katzen
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: OES 04-3
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.

VII. QUICK RESOLUTION

Under Section 22.18(a) of the Consolidated Rules of Practice, Respondent has the option of resolving this matter at any time by paying the penalty proposed in this Complaint in full. Payment of the penalty must be made by submitting a bank, cashier's or certified check payable to "Treasurer, United States of America" to:

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

The penalty payment check must reference the title and docket number of this proceeding ("In the Matter of Highway Safety Corporation," Docket Number EPCRA-01-2010-0041). Copies of the check must also be mailed to the Regional Hearing Clerk and to Amelia Welt Katzen at the addresses cited above.

If the Respondent pays the proposed penalty in full within thirty (30) days after receiving this Complaint, then the Respondent need not file an Answer to the Complaint. If the Respondent wishes to resolve this matter without having to file an Answer but needs additional

time in which to do so, the Respondent may file a written statement with the Regional Hearing Clerk at the address above within thirty (30) days of receiving the Complaint. The written statement must specify that the Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint. Failure to make such payment within the sixty (60) days may subject the Respondent to a default action. Upon receipt of payment in full, the Regional Judicial Officer shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

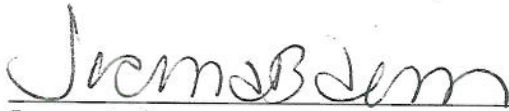
VIII. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with Christian Rascher, EPCRA Enforcement Coordinator in EPA Region I's Office of Environmental Stewardship, at 617-918-1834, concerning the facts of this case or the amount of the proposed penalty and the possibility of settlement. Respondent's attorney is encouraged to contact Amelia Welt Katzen, Senior Enforcement Counsel, at 617-918-1869, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

Please note that a request for an informal settlement conference does not enlarge 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 toxic chemical release forms (Form R). If Respondent chooses to remit the proposed penalty, it is still under a legal duty to submit complete and accurate Form Rs.

Failure or refusal to file such forms may subject Respondent to additional civil penalties of up to \$37,500 per day of violation.



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency – Region 1

Date: Sept 7, 2010