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EPA REGION 4

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

2010 APR 20 AM 10:11

HEARING CLERK

IN THE MATTER OF: )  
 )  
Chem-Way Corporation )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. EPCRA-04-2010-2015


**UNOPPOSED MOTION TO AMEND THE COMPLAINT**

Comes now Complainant, the United States Environmental Protection Agency (EPA) Region 4, by and through its counsel pursuant to Rule 22.16(a) of the Consolidated Rules of Practice (40 C.F.R. § 22.16(a)) and respectfully requests leave to amend the Complaint filed in this matter and as grounds therefore states as follows:

The Complaint includes the chemicals acetone, hydrochloric acid, and phosphoric acid in Count 3 in error. The Amended Complaint deletes these chemicals from Count 3 thereby correcting the Complaint. The penalty included in the Complaint remains unchanged.

Complainant requests that the Amended Complaint be deemed filed and served on Respondent on the date of the Order granting the Motion. Prior to filing this Motion, the undersigned contacted the opposing party as to the relief requested herein and Counsel for Respondent indicated that it does not oppose the Motion.

An Amended Complaint is attached to this Motion.

  
\_\_\_\_\_  
Jennifer M. Lewis  
Counsel for Complainant

4-20-2010  
Date

**CERTIFICATE OF SERVICE**

I certify that the foregoing Motion to Amend the Complaint was sent this day in the following manner to the addressees listed below:

Original by Interoffice Mail to:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth St., SW  
Atlanta, Georgia 30303

Copy by Certified Mail and facsimile to:

James W. Potter  
Counsel for Respondent  
Nexsen Pruet, LLC  
1239 Main Street  
Suite 700  
Columbia, South Carolina 29201

Copy by Pouch Mail and facsimile to:

The Honorable Susan L. Biro  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Ave., N.W.  
Mail Code 1900L  
Washington, DC 20005  
Fax No. (202) 565-0044



\_\_\_\_\_  
Jennifer M. Lewis  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Dated: 4-20-2010

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

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HEARING CLERK

IN THE MATTER OF:	)	COMPLAINT AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
	)	
Chem-Way Corporation	)	
	)	EPCRA-04-2010-2015
Respondent.	)	
<hr/>		

ADMINISTRATIVE COMPLAINT

This Administrative Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 325 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11045. The Administrator of EPA has delegated this authority to the Regional Administrators by EPA delegation 22-3-A (October 31, 1989; May 11, 1994). The Regional Administrator, Region 4, has re delegated this authority to the Director, Air, Pesticides, and Toxics Management Division by EPA Region 4 delegation 22-3-A (April 4, 1994). The Director, Air, Pesticides, and Toxics Management Division (Complainant) issues this Complaint and Notice of Opportunity to Request a Hearing against Chem-Way Corporation for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370, and alleges the following:

PRELIMINARY STATEMENT

1. Chem-Way Corporation (Respondent) is a corporation incorporated and authorized to do business in the State of North Carolina.
2. Respondent is a "person" as that term is defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
3. Respondent owns and operates a "facility" as that term is defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
4. Respondent's facility is located at 1816 Parker Drive, Charlotte, North Carolina.
5. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a material safety data sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act (OSHA) shall submit to the local emergency planning committee (LEPC),

the State emergency response commission (SERC), and fire department with jurisdiction over the facility, by March 1, 1988, and on or before March 1 annually thereafter, completed emergency and hazardous chemical inventory forms (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that section for all hazardous chemicals present at the facility at any one time in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

6. At all times relevant to this Complaint, hydrogen peroxide and sulfuric acid have been listed as EHSs under 40 C.F.R. Part 355, Appendices A and B.

7. At all times relevant to this Complaint, acetone, acetic acid, potassium hydroxide, sodium hydroxide, sodium hydrosulfide, hydrochloric acid and phosphoric acid have been listed as hazardous chemicals pursuant to 40 C.F.R. Part 370 and 29 C.F.R. § 1910.1200.

#### COUNT 1

8. Paragraphs 1 through 7 are re-alleged and incorporated herein by reference.

9. During calendar year 2007, hydrogen peroxide and sulfuric acid were present at the facility in an amount equal to or greater than the 500 pound threshold established in 40 C.F.R. Part 370.

10. During calendar year 2007, acetone, acetic acid, potassium hydroxide, sodium hydroxide, sodium hydrosulfide, hydrochloric acid and phosphoric acid were present at the facility in an amount equal to or greater than the 10,000 pound threshold established in 40 C.F.R. Part 370.

11. Respondent failed to submit completed emergency and hazardous chemical inventory forms (Tier I or Tier II) for hydrogen peroxide, sulfuric acid, acetone, acetic acid, potassium hydroxide, sodium hydroxide, sodium hydrosulfide, hydrochloric acid, and phosphoric acid for calendar year 2007 to the LEPC, SERC and fire department with jurisdiction over the facility by March 1, 2008.

12. Respondent violated the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), for calendar year 2007.

#### COUNT 2

13. Paragraphs 1 through 12 are re-alleged and incorporated herein by reference.

14. During calendar year 2006, hydrogen peroxide and sulfuric acid, both EHSs, were present at the facility in an amount equal to or greater than the 500 pound threshold established in 40 C.F.R. Part 370.

15. During calendar year 2006, acetone, acetic acid, potassium hydroxide, sodium hydroxide, sodium hydrosulfide, hydrochloric acid and phosphoric acid were present at the facility in an amount equal to or greater than the 10,000 pound threshold established in 40 C.F.R. Part 370.

16. Respondent failed to submit completed emergency and hazardous chemical inventory forms (Tier I or Tier II) for hydrogen peroxide, sulfuric acid, acetone, acetic acid, potassium hydroxide, sodium hydroxide, sodium hydrosulfide, hydrochloric acid, and phosphoric acid for calendar year 2006 to the LEPC, SERC and fire department with jurisdiction over the facility by March 1, 2007.

17. Respondent violated the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), for calendar year 2006.

### COUNT 3

18. Paragraphs 1 through 17 are re-alleged and incorporated herein by reference.

19. During calendar year 2005, hydrogen peroxide and sulfuric acid, both EHSs, were present at the facility in an amount equal to or greater than the 500 pound threshold established in 40 C.F.R. Part 370.

20. During calendar year 2005, acetic acid, potassium hydroxide, sodium hydroxide and sodium hydrosulfide were present at the facility in an amount equal to or greater than the 10,000 pound threshold established in 40 C.F.R. Part 370.

21. Respondent failed to submit completed emergency and hazardous chemical inventory forms (Tier I or Tier II) for hydrogen peroxide, sulfuric acid, acetic acid, potassium hydroxide, sodium hydroxide, and sodium hydrosulfide, for calendar year 2005 to the LEPC, SERC and fire department with jurisdiction over the facility by March 1, 2006.

22. Respondent violated the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), for calendar year 2005.

### PROPOSED PENALTY

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 CFR Part 19, EPA may assess a civil penalty of not more than \$32,500 for each violation of Section 312, 42 U.S.C. § 11022, that occurred on or after March 15, 2004 and prior to January 12, 2009. Each day a violation of Section 312 continues constitutes a separate violation.

Civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045(c), may be assessed by Administrative Order. On the basis of the violations of EPCRA described above, Complainant alleges that Respondent is subject to penalties for violations of EPCRA Section 312. Accordingly, Complainant proposes a penalty pursuant to the authority of Section 325 of EPCRA, 42 U.S.C. § 11045, as set forth below:

Count 1	EPCRA Section 312, 42 U.S.C. § 11022	\$ 97,500
Count 2	EPCRA Section 312, 42 U.S.C. § 11022	\$ 97,500
Count 3	EPCRA Section 312, 42 U.S.C. § 11022	\$ 97,500

In calculating the proposed EPCRA penalties, 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, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice requires.

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Within 20 days of service of this Complaint, Respondent may request 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 twenty (20) days of receipt of this Complaint. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation, the Answer shall so state. Such a statement is deemed to be a denial of the allegation. The Answer shall contain: (1) a statement of the facts which constitute the grounds of a defense; (2) a concise statement of the facts which Respondent intends to place at issue in the hearing; 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 the allegation.

**If Respondent fails to file a written Answer within twenty (20) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to answer within twenty (20) days may result in the filing of a Motion for Default and issuance of a Default Order. The Default Order may impose the penalties proposed herein without further proceedings.**

Any hearing requested will be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Respondent must send any request for a hearing to:

Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, CA 30303

A copy of the Answer and all other documents that Respondent files in this action must be sent to the following EPA attorney representing U.S. EPA in this matter:

Jennifer Lewis  
Assistant Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

If Respondent fails to request a hearing within the designated time period or fails to appear at a hearing, EPA may issue a Final Order assessing the proposed administrative penalty. In accordance with Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), Respondent may obtain review of any Final Order by filing a notice of appeal in the United States District Court for the district in which the facility is located within 30 days from the date of such Final Order and by simultaneously sending a copy of such notice by certified mail to the Administrator of EPA.

#### TERMS OF PAYMENT

If the Respondent does not contest the findings and assessments set out above, payment of the penalties may be forwarded to EPA. Payment of penalties for EPCRA violations must be made by certified or cashiers check payable to the "Treasurer, United States of America" and must be sent to:

Regional Hearing Clerk  
U.S. EPA, Region 4  
P.O. Box 100142  
Atlanta, Georgia 30384

The check should reference the name and docket number of this Complaint.

#### SETTLEMENT CONFERENCE

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


Jennifer Lewis  
Assistant Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9518

Please note that a request for, the scheduling of, or the participation in, an informal settlement conference does not extend the twenty (20) day period during which a written Answer and Request for Hearing must be filed as set forth above. The informal settlement conference procedure, however, may be pursued simultaneously with the hearing procedure.

**SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

The Consolidated Rules prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Regional Administrator, Regional Judicial Officer or the Administrative Law Judge after issuance of a Complaint. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Administrative Law Judge, Regional Administrator nor the Regional Judicial Officer shall have any ex parte communication with Respondent or any EPA representatives involved in this matter on the merits of any issue involved in this proceeding.

4-20-10  
Date

  
Kenneth R. Lapierre, Acting Director  
Air, Pesticides and Toxics  
Management Division



**CERTIFICATE OF SERVICE**

I certify that the foregoing Amended Complaint was sent this day in the following manner to the addressees listed below:

Original by Interoffice Mail to:

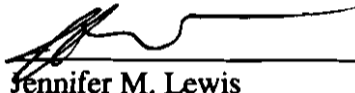
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth St., SW  
Atlanta, Georgia 30303

Copy by Facsimile and Certified Mail to:

James W. Potter  
Counsel for Respondent  
Nexsen Pruet, LLC  
1239 Main Street  
Suite 700  
Columbia, South Carolina 29201

Copy by Facsimile and Pouch Mail to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
Fax No. (202) 565-0044

  
\_\_\_\_\_  
Jennifer M. Lewis  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Dated: *4-20-2010*