



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

SEP 21 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Randy Oehrlein
Vice President of Engineering
Carley Foundry, Inc.
8301 Coral Sea Street NE
Blaine, MN 55449

Re: In the Matter of Carley Foundry Inc., Blaine, Minnesota
Docket No. **EPCRA-05-2009-0031**

Dear Mr. Oehrlein:

I have enclosed a Complaint filed against Carley Foundry, Inc., under Sections 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §11045(c)(2). The Complaint alleges violations of 312 of EPCRA, 42 U.S.C. § 11022.

As provided in the Complaint, if you would like 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 within 30 days of your receipt of this Complaint, the Presiding Officer may issue a default order and the proposed civil penalty will become due 30 days later. Mail your answer to Susan Tennenbaum, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

In addition, whether or not you request a hearing, you may request an informal settlement conference by contacting Ruth McNamara at (312) 353-3193. If you have any legal questions, please contact Susan Tennenbaum, Associate Regional Counsel at (312) 886-0273.

Sincerely,

A handwritten signature in black ink, appearing to read "Jo - El-Zein".

Jason H. El-Zein, Chief
Emergency Response Branch 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**Carley Foundry Inc.
8301 Coral Sea Street NE
Blaine, Minnesota 55449**

Respondent

) **Docket No. EPCRA-05-2009-0031**
)
) **Proceeding to Assess a Civil Penalty Under Section**
) **325(c)(1) of the Emergency Planning and**
) **Community Right-to-Know Act of 1986**

RECEIVED

SEP 21 2009

Complaint

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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

2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is Carley Foundry, Inc. a corporation doing business in the State of Minnesota.

Statutory and Regulatory Background

4. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), the community emergency coordinator for the local emergency planning committee (LEPC) and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one

time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

5. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

6. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to an MSDS.

7. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z, are hazardous.

General Allegations

8. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

9. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 8301 Coral Sea Street NE, Blaine, Minnesota (facility).

10. At all times relevant to this Complaint, Respondent was an employer at the facility.

11. 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 or operated by the same person.

12. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

13. Propane and sulfuric acid are listed as toxic and hazardous substances under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

14. Propane is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

15. Propane (CAS# 74-98-6) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

16. Sulfuric acid (CAS# 7664-93-9) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

17. Sulfuric acid CAS# 7664-93-9 has a minimum threshold level of 500 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

18. During at least one period of time in calendar year 2006, sulfuric acid and propane were present at the facility in an amount equal to or greater than the minimum threshold level.

19. During at least one period of time in calendar year 2007, sulfuric acid and propane were present at the facility in an amount equal to or greater than the minimum threshold level.

20. During at least one period of time in calendar year 2008, sulfuric acid and propane were present at the facility in an amount equal to or greater than the minimum threshold level.

21. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid and propane.

22. Respondent was required to submit to the state emergency response commission, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid and propane on or before March 1, 2007, for calendar year 2006.

23. Respondent was required to submit to the state emergency response commission, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid and propane on or before March 1, 2008, for calendar year 2007.

24. Respondent was required to submit to the state emergency response commission, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid and propane on or before March 1, 2009, for calendar year 2008.

25. At all times relevant to this Complaint, the Minnesota Division of Homeland Security and Emergency Management was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

26. At all times relevant to this Complaint, the Blaine Fire Department was the fire department with jurisdiction over the facility.

Count 1

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

28. As of March 6, 2009, Respondent had not submitted to the SERC or Blaine Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and propane for calendar year 2006.

29. Each day Respondent failed to submit to the SERC or Blaine Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and propane by March 1, 2007, for calendar year 2006 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

Count 2

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

31. As of March 6, 2009, Respondent had not submitted to the SERC or Blaine Fire Department completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and propane for calendar year 2007.

32. Each day Respondent failed to submit to the SERC or Blaine Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and propane by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

Count 3

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

34. As of March 6, 2009, Respondent had not submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and propane for calendar year 2008.

35. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and propane by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

Count 4

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

37. As of March 6, 2009, Respondent had not submitted to the Blaine Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and propane for calendar year 2008.

38. Each day Respondent failed to submit to the fire department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and propane by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

Proposed EPCRA Penalty

39. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred from March 15, 2004, through January 11, 2009, and to \$37,500 per day of violation for violations that occurred after January 11, 2009.

40. Based upon an evaluation of the facts alleged in this Complaint, and after considering the nature, circumstances, extent and gravity of the violations, the violator's ability to pay, prior history of violations, degree of culpability, economic benefit or saving resulting from the violations, and any other matters that justice may require, Complainant proposes that the U.S. EPA assess a civil penalty against Respondent of \$52,497 for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various EPCRA counts of this Complaint as follows:

| | |
|--|----------|
| Count 1 EPCRA Section 312(a) (SERC and fire department): | \$2,000 |
| Count 2 EPCRA Section 312(a) (SERC and fire department): | \$2,000 |
| Count 3 EPCRA Section 312(a) (SERC): | \$27,898 |
| Count 4 EPCRA Section 312(a) (fire department): | \$18,599 |
| TOTAL EPCRA SECTION 325 PENALTY | \$50,497 |

41. Complainant calculated the EPCRA penalties by evaluating the facts and circumstances of this case with specific reference to U.S. 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)," 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* (Consolidated Rules) at 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.

Terms of Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check for the EPCRA violations payable to the "Treasurer, United States of America," to:

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

The check must note the case title of this matter: Carley Foundry Inc., Blaine, Minnesota, the docket number of this Complaint and the billing document number _____. A transmittal letter stating the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Ruth McNamara, (SC-6J)
Office of Chemical Emergency
Preparedness and Prevention
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Susan Tennenbaum, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Alternatively, Respondent may pay by electronic funds transfer, payable to "Treasurer, United States of America" and sent to:

Federal Reserve Bank of New York
ABA NO. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer state the following:
Carley Foundry Inc., the docket number of this Complaint and the billing document number _____ . A transmittal letter indicating payment by electronic funds transfer

must be sent to the Regional Hearing Clerk, Ruth McNamara, and Susan Tennenbaum, at the addresses indicated above.

This civil penalty is not deductible for federal tax purposes.

Notice of Opportunity to Request a Hearing

If Respondent contests any material fact alleged in this Complaint 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, as discussed below, 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.

Answer

Respondent must file a written Answer to this Complaint if Respondent contests any material fact of the Complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. 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 must send a copy of its Answer and copies of all other documents that Respondent files in this action to Susan Tennenbaum at the address indicated 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 Ruth McNamara at (312) 353-3193.

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 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

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

U.S. Environmental Protection Agency, Complainant

9-17-09
Date

Jo El-Zein
Jason H. El-Zein, Chief
Emergency Response Branch 1
Superfund Division

In the Matter of:
Carley Foundry, Inc., Blaine, Minnesota
Docket No. EPCRA-05-2009-0031

RECEIVED
SEP 21 2009
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY.


In the Matter of:
Carley Foundry, Inc., Blaine, Minnesota
Docket No. EPCRA-05-2009-0031

Certificate of Service

I, Ruth McNamara, certify that I filed the original and one copy of the Complaint, docket number **EPCRA-05-2009-0031** with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a copy to the Respondent by first-class, postage prepaid, certified mail, return receipt requested, along with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, and the Enforcement Response Policy, by placing them in the custody of the United States Postal Service addressed as follows:

Randy Oehrlein
Vice President of Engineering
Carley Foundry, Inc.
8301 Coral Sea Street
NE Blaine, MN 55449

on the 21ST day of September, 2009.


Ruth McNamara
U.S. Environmental Protection Agency
Region 5