

FILED

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION IX
4 75 HAWTHORNE STREET
5 SAN FRANCISCO, CA 94105

2007 SEP 27 AM 8:49
U.S. EPA REGION IX
REGIONAL HEARING CLERK

6 In the Matter of:) Docket No. EPCRA-09-2007 **0028**
7)
8 Arizona Environmental) **COMPLAINT AND NOTICE OF**
9 Container Corporation,) **OPPORTUNITY FOR HEARING**
10)
11 Respondent.)

12 **PRELIMINARY STATEMENT**

13 This is a civil administrative action instituted pursuant to
14 Section 325(c) of Title III of the Superfund Amendments and
15 Reauthorization Act, 42 U.S.C. §§ 11001 et seq., also known as
16 the Emergency Planning and Community Right-to-Know Act of 1986
17 ("EPCRA"), for violation of Section 313 of EPCRA, 42 U.S.C. §
18 11023, and the federal regulations promulgated to implement
19 Section 313 at 40 C.F.R Part 372. Complainant is the Director of
20 the Communities and Ecosystems Division, United States
21 Environmental Protection Agency, Region IX ("EPA"), who has been
22 duly delegated the authority to bring this action. Respondent is
23 Arizona Environmental Container Corporation. This Complaint and
24 Notice of Opportunity for Hearing ("Complaint") serves as notice
25 that Complainant has reason to believe that Respondent violated
26 Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal
27 regulations promulgated to implement Section 313 at 40 C.F.R Part
28 372.

29 **APPLICABLE STATUTORY AND REGULATORY SECTIONS**

30 1. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§
31 11023 and 11048, EPA promulgated the Toxic Chemical Release

1 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372.

2 2. Section 313(a) of EPCRA, as implemented by 40 C.F.R. §
3 372.30, provides that an owner or operator of a facility that
4 meets the criteria set forth in EPCRA Section 313(b) and 40
5 C.F.R. § 372.22, is required to submit annually to the
6 Administrator of EPA and to the State in which the facility is
7 located, no later than July 1st of each year, a toxic chemical
8 release inventory reporting form (hereinafter "Form R") for each
9 toxic chemical listed under 40 C.F.R. § 372.65 that was
10 manufactured, processed or otherwise used at the facility during
11 the preceding calendar year in quantities exceeding the
12 thresholds established under EPCRA Section 313(f) and 40 C.F.R.
13 §§ 372.25 and 372.28.

14 3. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide
15 that the requirements of Section 313(a) and 40 C.F.R. § 372.30
16 apply to an owner and operator of a facility that has 10 or more
17 full-time employees; that is in a Standard Industrial
18 Classification major group codes 10 (except 1011, 1081, and
19 1094), 12 (except 1241), and 20 through 39; industry codes 4911,
20 4931, or 4939 (limited to facilities that combust coal and/or oil
21 for the purpose of generating power for distribution in
22 commerce), or 4953 (limited to facilities regulated under the
23 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.
24 §6921 et seq.), or 5169, 5171, or 7389 (limited to facilities
25 primarily engaged in solvent recovery services on a contract or
26 fee basis); and that manufactures, processes, or otherwise uses

1 one or more toxic chemicals listed under Section 313(c) of EPCRA
2 and 40 C.F.R. § 372.65 in quantities in excess of the applicable
3 thresholds established under EPCRA Section 313(f) and 40 C.F.R.
4 §§ 372.25 and 372.28.

5 **GENERAL ALLEGATIONS**

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

8 5. At all times relevant to this Complaint, Respondent was
9 an owner and operator of a "facility," as that term is defined by
10 Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. §
11 372.3, which is located at 850 N. Davidson Street in Eloy,
12 Arizona (hereinafter "Facility").

13 6. At all times relevant to this Complaint, the Facility
14 had 10 or more "full-time employees," as that term is defined at
15 40 C.F.R. § 372.3.

16 7. The Facility is classified in Standard Industrial
17 Classification code 3089, which falls within the Standard
18 Industrial Classification code 30.

19 **COUNT I**

20 **Failure to File Timely Form R for Styrene for Calendar Year 2005**

21 8. Paragraphs 1 through 7 are realleged and incorporated
22 herein by reference.

23 9. During calendar year 2005, Respondent processed
24 approximately 731,661 pounds of Styrene, CAS No. 100-42-5, a
25 chemical listed under 40 C.F.R. § 372.65.

26 10. The quantity of Styrene that Respondent processed at the
27

1 Facility during calendar year 2005 exceeds the established
2 threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(b).

3 11. Respondent failed to submit a Form R for Styrene to the
4 EPA Administrator and to the State of Arizona on or before July
5 1, 2006.

6 12. Respondent's failure to submit a timely Form R for
7 Styrene that Respondent processed at the Facility during calendar
8 year 2005 constitutes a violation of Section 313 of EPCRA, 42
9 U.S.C. § 11023, and 40 C.F.R. Part 372.

10 **PROPOSED CIVIL PENALTY**

11 Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.
12 Part 19 authorize EPA to assess a penalty of up to \$27,500 for
13 each violation of Section 313 of EPCRA that occurred on or after
14 January 31, 1997 but before March 15, 2004 and up to \$32,500 for
15 each violation that occurred on or after March 15, 2004. Based
16 on the violation cited in this Complaint, on the nature,
17 circumstances, extent, and gravity of the violation alleged, and
18 on the degree of Respondent's culpability, as set forth in the
19 Enforcement Response Policy for Section 313 of EPCRA dated August
20 10, 1992 (a copy of which is enclosed), EPA proposes that
21 Respondent be assessed the following civil penalty for the
22 violation alleged in this Complaint:

23 **COUNT I**

24 Failure to submit a timely Form R for Styrene for calendar year
25 2005:
26 Circumstance Level 4, Extent Level B \$ 21,067
27 **Total Penalty Proposed (rounded to nearest hundred). . . \$ 21,100**

1 desired. If you deny any material fact or raise any affirmative
2 defense, you will be considered to have requested a hearing.

3 The Answer must be filed with:

4 **Regional Hearing Clerk**
5 **USEPA, Region IX**
6 **75 Hawthorne Street**
7 **San Francisco, CA 94105**

8 In addition, please send a copy of the Answer and all other
9 documents that you file in this action to:

10 **Carol Bussey**
11 **Assistant Regional Counsel**
12 **Office of Regional Counsel (ORC-2)**
13 **USEPA, Region IX**
14 **75 Hawthorne Street**
15 **San Francisco, CA 94105**

16 Ms. Bussey is the attorney assigned to represent EPA in this
17 matter. Her telephone number is (415)972-3950.

18 You are further informed that the Consolidated Rules of
19 Practice prohibit any ex parte (unilateral) discussion of the
20 merits of any action with the Regional Administrator, Regional
21 Judicial Officer, Administrative Law Judge, or any person likely
22 to advise these officials in the decision of the case, after the
23 Complaint is issued.

24 **INFORMAL SETTLEMENT CONFERENCE**

25 EPA encourages all parties against whom a civil penalty is
26 proposed to pursue the possibility of settlement through informal
27 conferences. Therefore, whether or not you request a hearing,
28 you may confer informally with EPA through Carol Bussey, the EPA
attorney assigned to this case, regarding the facts of this case,
the amount of the proposed penalty, and the possibility of

1 settlement. An informal settlement conference does not, however,
2 affect your obligation to file an Answer to this Complaint.

3 **ALTERNATIVE DISPUTE RESOLUTION**

4 The parties also may engage in any process within the scope
5 of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et
6 seq., which may facilitate voluntary settlement efforts. Dispute
7 resolution using alternative means of dispute resolution does not
8 divest the Presiding Officer of jurisdiction nor does it
9 automatically stay the proceeding.

10 **QUICK RESOLUTION**

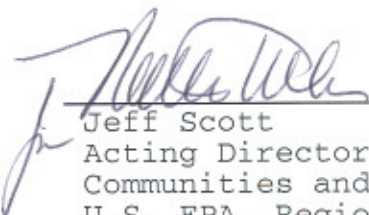
11 Instead of requesting an informal settlement conference or
12 filing an Answer requesting a hearing, you may choose to resolve
13 the proceeding by paying the specific penalty proposed in the
14 Complaint and filing a copy of the check or other instrument of
15 payment with the Regional Hearing Clerk within thirty (30) days
16 after receiving the Complaint. If you wish to resolve the
17 proceeding in this manner instead of filing an answer but need
18 additional time to pay the penalty, you may file a written
19 statement stating that you agree to pay the proposed penalty in
20 accordance with 40 C.F.R § 22.18(a)(1) with the Regional Hearing
21 Clerk within 30 days after receiving the Complaint. The written
22 statement need not contain any response to, or admission of, the
23 allegations in the Complaint. Within sixty (60) days after
24 receiving the Complaint, the full amount of the proposed penalty
25 must be paid. Failure to make such payment within this sixty-day
26 period may subject you to default. Upon receipt of payment in

1 full, the Regional Judicial Officer will issue a final order.
2 Payment by a respondent shall constitute a waiver of the
3 respondent's rights to contest the allegations and to appeal the
4 final order. In addition, full payment of the proposed penalty
5 shall only resolve Respondent's liability for Federal civil
6 penalties for violations and facts alleged in the Complaint and
7 does not affect the right of EPA or the United States to pursue
8 appropriate injunctive or other equitable relief or criminal
9 sanctions for any violations of law.

10 **CONSENT AGREEMENT AND FINAL ORDER**

11 EPA has the authority, where appropriate, to modify the
12 amount of the proposed penalty to reflect any settlement reached
13 with you in an informal conference or through alternative dispute
14 resolution. The terms of such an agreement would be embodied in
15 a Consent Agreement and Final Order. A Consent Agreement signed
16 by both parties would be binding as to all terms and conditions
17 specified therein when the Regional Judicial Officer signs the
18 Final Order.

19
20 Date: 9-26-2007



21 Jeff Scott
22 Acting Director
23 Communities and Ecosystems Division
24 U.S. EPA, Region IX
25
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28

CERTIFICATE OF SERVICE

I certify that the original and foregoing Complaint and Notice of Opportunity for Hearing, Docket Number EPCRA-09-2007- 0028, was filed today with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of:

- (1) the Complaint;
- (2) the Consolidated Rules of Practice, 40 C.F.R. Part 22; and
- (3) the 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), dated April 12, 2001

were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Kirk Sullivan
President
Arizona Environmental Container Corporation
232 Lasso Lane
Lakeland, Florida 33801

Certified Return Receipt Article No: 7005 3110 0002 8247 1834

Dated: 9/27/07



Russ Frazer
TRI Program Enforcement Officer
Toxics Office, Community and Ecosystems Division
United States Environmental Protection Agency, Region IX