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

In the Matter of:	)	**EPA Docket No.: CERC-03-2008-0344**
	)	**EPA Docket No.: EPCRA-03-2008-0344**
Dow Reichhold Specialty Latex, LLC 2400 Ellis Road Durham, North Carolina 27703,	)	
Respondent.	)	
	)	**Proceedings under Sections103 and 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9603, 9609, and Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11004, 11045**
Dow Reichhold Specialty Latex, LLC 144 Fork Branch Road Dover, Delaware 19904,	)	
Facility.	)	

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MOTION TO AMEND ADMINISTRATIVE COMPLAINT

Pursuant to Section 22.14(c) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. § 22.14(c), Complainant, the United States Environmental Protection Agency ("EPA"), respectfully moves to amend its Administrative Complaint in this matter. Complainant states as follows:

1. On June 17, 2008, Complainant filed its Administrative Complaint ("Complaint") in this matter against Respondent Dow Reichhold Specialty Latex, LLC ("Respondent"), as the owner and operator of a facility located at 144 Fork Branch Road in Dover, Delaware (the "Facility"), for violations of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9603, and Section 304(a), (b), and (c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004(a), (b), (c).

2. On July 16, 2008, Respondent filed an Answer to the Complaint

3. On August 4, 2008, Complainant and Respondent elected to participate in Alternative Dispute Resolution ("ADR"), and subsequently engaged in settlement negotiations.

4. As a result of evidence presented by Respondent in its Answer and during settlement negotiations, Complainant, in its enforcement discretion, has decided not to pursue Counts IV and VI of the Complaint as they pertain to violations of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), related to Respondent's alleged failure to provide timely written follow-up reports to the state emergency response commission ("SERC") following the July 3, 2005 release of 1,3-butadiene, and the August 25, 2006 release of styrene at the Facility.

5. Accordingly, Complainant requests that the Presiding Officer grant this Motion to Amend the Complaint to withdraw Counts IV and VI of the Complaint.

6. Upon consultation, Counsel for Respondent has stated that Respondent will not oppose this Motion.

7. A copy of Complainant's proposed First Amended Administrative Complaint is attached to this Motion as Attachment 1.

8. A Proposed Order granting Complainant's proposed First Amended Administrative Complaint is attached hereto as Attachment 2.

WHEREFORE, Complainant EPA respectfully requests that the Presiding Officer grant Complainant's Motion to Amend the Complaint in this matter, and allow the Complainant three business days from the date of issuance of the Presiding Officer's Order granting Complainant's Motion to Amend, to file the attached proposed First Amended Administrative Complaint.

Respectfully submitted,

8/27/08
Date

Allison F. Gardner
Assistant Regional Counsel
Counsel for Complainant

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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In the Matter of:	)	**EPA Docket No.: CERC-03-2008-0344**
	)	**EPA Docket No.: EPCRA-03-2008-0344**
Dow Reichhold Specialty Latex, LLC 2400 Ellis Road Durham, North Carolina 27703,	)	
Respondent.	)	**First Amended Administrative Complaint and Notice of Opportunity for a Hearing filed under Sections 103 and 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9603, 9609, and Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11004, 11045**
Dow Reichhold Specialty Latex, LLC 144 Fork Branch Road Dover, Delaware 19904,	)	
Facility.	)	

FIRST AMENDED ADMINISTRATIVE COMPLAINT

This First Amended Administrative Complaint and Notice of Opportunity for a Hearing (hereinafter "Complaint") is issued pursuant to the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, delegated to the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Executive Order No. 12580, January 23, 1987, 52 Fed. Reg. 2923, further delegated to the Regional Administrators by EPA Delegation No. 14-31, and redelegated to Complainant by EPA Region III Delegation No. 14-31. This Complaint is also being filed pursuant to the authority vested in the Administrator of EPA 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 Administrators 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 Complaint as Attachment A. The Complainant is the Director of the Hazardous Site Cleanup

Division for EPA Region III. The Respondent is Dow Reichhold Specialty Latex, LLC ("Respondent" or "DRSL"). Respondent is hereby notified of EPA's determination that Respondent has violated the requirements and prohibitions of Section 103 of CERCLA, 42 U.S.C. § 9603, Section 304 of EPCRA, 42 U.S.C. § 11004, and their respective implementing regulations, 40 C.F.R. Parts 302 and 355. In support of its Complaint, Complainant alleges the following:

GENERAL ALLEGATIONS

1. Respondent is a Delaware limited liability company, formed as a joint venture between The Dow Chemical Company and Reichhold, Inc., with its principal place of business located at 2400 Ellis Road, Suite 100, in Durham, North Carolina.

2. As a limited liability company formed as a joint venture, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.20.

3. Beginning on or about January 1, 2002, and at all times relevant to this Complaint, Respondent was in charge of, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the DRSL facility located at 144 Fork Branch Road in Dover, Delaware, ("Dover facility" or "Facililty").

4. Beginning on or about January 1, 2002, and at all times relevant to this Complaint, Respondent has operated the Dover facility, within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004.

5. The Dover facility is a "facility," as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.20.

6. Hazardous chemicals, including 1,3-butadiene, Chemical Abstracts Service ("CAS") No. 106-99-0, and styrene, CAS No. 100-42-5, were stored and used at the Dover facility at all times relevant to this Complaint.

7. On or about May 9, 2006, EPA sent an Information Request Letter to the Respondent pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), seeking information in connection with a release of 1,3-butadiene from the Dover facility on July 3, 2005.

8. On or about May 26, 2006, Respondent provided a Response to EPA's May 9, 2006 Information Request Letter.

9. On or about June 26, 2007, EPA sent an Information Request Letter to the Respondent pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), seeking information in connection with a release of styrene from the Dover facility, which began on August 25, 2006.

10. On or about August 20, 2007, Respondent provided a Response to EPA's June 26, 2007 Information Request Letter.

11. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

COUNT I - VIOLATION OF SECTION 103 OF CERCLA – JULY 3, 2005 1,3-BUTADIENE RELEASE

12. The allegations contained in paragraphs 1 through 11 of this Complaint are incorporated by reference herein as though fully set forth at length.

13. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility, to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

14. Upon information and belief, beginning on or about July 3, 2005, at or about 1:07 a.m., approximately 1,154 pounds of 1,3-butadiene were released from the Dover facility (the "Butadiene Release").

15. 1,3-butadiene is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, with an RQ of 10 pounds, as listed in 40 C.F.R. § 302.4.

16. The Release constitutes a "release," as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and 40 C.F.R. § 302.3, of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

17. The Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

18. Upon information and belief, Respondent had or should have had knowledge of the July 3, 2005 release of 1,3-butadiene from the Facility, in a quantity equal to or greater than its RQ, at 1:10 a.m. on July 3, 2005.

19. Respondent did not notify the NRC of the Butadiene Release until or about 3:05 a.m. on July 3, 2005, approximately 2 hours after the Respondent knew or should have known that a release of a hazardous substance had occurred from the Dover facility in a quantity equal to or greater than its RQ.

20. Respondent failed to notify the NRC of the Butadiene Release, as soon as the Respondent had knowledge of the Release, as required by Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

21. Respondent's failure to immediately notify the NRC of the Butadiene Release as soon as Respondent had knowledge of the Release, is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

COUNT II - VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC – JULY 3, 2005 1,3-BUTADIENE RELEASE

22. The allegations contained in paragraphs 1 through 21 of this Complaint are incorporated by reference herein as though fully set forth at length.

23. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. § 355.40(b)(1) and (2), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to notify the State Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") immediately following a release of a hazardous substance in a quantity equal to or greater than the RQ for the hazardous substance, if that release requires notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

24. The SERC for the Dover facility is, and has been at all times relevant to this Complaint, the Delaware Department of Natural Resources and Environmental Control ("DNREC") Spill Response Center, located at 156 South State Street in Dover, Delaware 19901.

25. The Butadiene Release constitutes a release of a hazardous substance, in a quantity equal to, or greater than, its RQ, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and consequently requiring immediate notification of the SERC and the LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. § 355.40(b)(1) and (2).

26. Respondent did not notify the SERC of the Butadiene Release until or about 3:21 a.m. on July 3, 2005, more than 2 hours after Respondent gained knowledge or should have gained knowledge that a release of a hazardous substance had occurred from the Facility in an amount equal to or greater than its RQ.

27. Respondent did not immediately notify the SERC of the occurrence of the Butadiene Release as soon as the Respondent had knowledge or should have had knowledge of the release, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. § 355.40(b)(1) and (2).

28. Respondent's failure to notify the SERC immediately following the Butadiene Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT III - VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – LEPC – JULY 3, 2005 1,3-BUTADIENE RELEASE

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

30. The LEPC for the Dover facility is, and has been at all times relevant to this Complaint, the Kent County LEPC, located at the Kent County Emergency Services Building, 911 Public Safety Boulevard in Dover, Delaware 19901.

31. Respondent did not notify the LEPC of the Butadiene Release until or about 3:17 a.m. on July 3, 2005, more than 2 hours after Respondent gained knowledge or should have gained knowledge that a release of a hazardous substance had occurred from the Facility in an amount equal to or greater than its RQ.

32. Respondent did not immediately notify the LEPC of the occurrence of the Butadiene Release as soon as the Respondent had knowledge or should have had knowledge of the release, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. § 355.40(b)(1) and (2).

33. Respondent's failure to notify the LEPC immediately following the Butadiene Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT IV - VIOLATION OF SECTION 103 OF CERCLA – AUGUST 25, 2006 STYRENE RELEASE

34. The allegations contained in paragraphs 1 through 33 of this Complaint are incorporated by reference herein as though fully set forth at length.

35. Upon information and belief, beginning on or about August 25, 2006, at or about 6:30 p.m., approximately 19,601 pounds of styrene were released from the Dover facility (the "Styrene Release").

36. Styrene is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, with an RQ of 1000 pounds, as listed in 40 C.F.R. § 302.4.

37. The Styrene Release constitutes a "release," as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and 40 C.F.R. § 302.3, of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

38. The Styrene Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

39. Upon information and belief, Respondent had or should have had knowledge of the release of styrene, from the Facility, in a quantity equal to or greater than its RQ, at 7:30 p.m. on August 25, 2006.

40. Upon information and belief, Respondent did not attempt to notify the NRC of the styrene release until sometime after midnight on August 26, 2006.

41. Respondent failed to notify the NRC of the Styrene Release, as soon as the Respondent knew or should have known of the release of styrene, from the Facility, in a quantity equal to or greater than its RQ, as required by Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

42. Respondent's failure to immediately notify the NRC of the Styrene Release as soon as Respondent knew or should have known of the Release, is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

PROPOSED CERCLA AND EPCRA PENALTIES

PROPOSED CERCLA PENALTY

Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), authorizes EPA to assess a penalty not to exceed $25,000.00 per violation of the notice requirements of Section 103 of CERCLA, 42 U.S.C. § 9603. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA") and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, (Feb. 13, 2004), codified at 40 C.F.R. Part 19, ("Penalty Inflation Rule"), copies of which are enclosed with this Complaint as Attachment B, violations of Section 103 of CERCLA that 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, 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 109(a) of CERCLA, 42 U.S.C. § 9609(a), 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 proposed penalty in this Complaint, Complainant has taken into account the nature, circumstances, extent, and gravity of the violation or 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 violation, 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 ("ERP")*, dated September 30, 1999, a copy of which is enclosed with this Complaint 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 CERCLA described above, Complainant has determined that Respondent is subject to penalties for violations under Section 109(a) of CERCLA, 42 U.S.C. § 9609(a). Accordingly, Complainant proposes a civil penalty in the amount of **$44,330.00** pursuant to the authority of Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), 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 notify the NRC immediately following the July 3, 2005 Release of 1,3-butadiene in a quantity equal to, or greater than, its RQ, in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6
Extent Level 2, Gravity Level A **$20,150.00**

Count IV: Failure to notify the NRC immediately following the Release of styrene in a quantity equal to, or greater than, its RQ, in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6
Extent Level 1, Gravity Level A **$24,180.00**

Base Penalty Calculation:

Nature of Violation - The violations by Respondent alleged in Counts I and IV of the Complaint address emergency response matters and concerns. Respondent's violations had a deleterious effect upon the reporting system under CERCLA, which is intended and designed to enable federal, state, and local governmental entities to be able to respond properly to chemical releases at and from facilities in their communities. Respondent's violations, therefore, pose a potential for harm not only to the CERCLA regulatory system, but also the protection of the environment and human health.

Extent Level - The Extent Level for Respondent's violation as alleged in Count I of the Complaint is Level 2 due to Respondent's failure to notify the NRC of the Butadiene Release for more than one hour, but less than two hours, after gaining knowledge of the release. The Extent Level for Respondent's violation as alleged in Count IV of the Complaint is Level 1 due to Respondent's failure to notify the NRC of the Styrene Release for more than two hours after gaining knowledge of the release.

Gravity Level - The Gravity Level for Respondent's violation as alleged in Count I of the Complaint is Level A due to the fact that the amount of 1,3-butadiene (approximately 1,154 pounds) released to the environment from the Dover facility was greater than 10 times its RQ of 10 pounds. The Gravity Level for Respondent's violation as alleged in Count IV of the Complaint is also Level A due to the fact that the amount of styrene (approximately 19,601 pounds) released to the environment from the Dover facility was greater than 10 times its RQ of 1000 pounds. A Gravity Level of A for these Counts incorporates and takes into account the nature and extent of harm posed by Respondent's violations concerning the Butadiene Release and the Styrene Release.

Base Penalty Total - In light of the adjustments to penalties instituted by the DCIA and the Penalty Inflation Rule, and the fact that the allegations of Counts I and IV of the Complaint address violations by Respondent which occurred after March 15, 2004, an Extent Level of I and a Gravity Level of A for Respondent's violations as alleged in Counts I and IV of the Complaint results in a Base Penalty of $20,150.00 for Count I and a Base Penalty of $24,180.00 for Count IV.

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 and IV of the Complaint.

Proposed Penalty - Count I: **$20,150.00.**
Proposed Penalty - Count IV: **$24,180.00.**

TOTAL PROPOSED CERCLA PENALTY: **$44,330.00**

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. Pursuant to the DCIA and the subsequent Penalty Inflation Rule, violations of Section 304 of EPCRA, 42 U.S.C. § 11004, 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, 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) of EPCRA, 42 U.S.C. § 11045(b), 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 violation, and such matters as justice may require, with specific reference to EPA's *ERP*, dated September 30, 1999. 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 Sections 304(a) and (b) of EPCRA, 42

U.S.C. §§ 11004(a) and (b). Accordingly, Complainant proposes a civil penalty in the amount of **$56,680.00** 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 II:	Failure to notify the SERC immediately following the July 3, 2005 Release of 1,3-butadiene in a quantity equal to, or greater than, its RQ, in violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. § 355.40(b)(1) and (2)	
	Extent Level 1, Gravity Level A	**$28,340.00**
Count III:	Failure to notify the LEPC immediately following the July 3, 2005 Release of 1,3-butadiene in a quantity equal to, or greater than, its RQ, in violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. § 355.40(b)(1) and (2)	
	Extent Level 1, Gravity Level A	**$28,340.00**

Base Penalty Calculation:

Nature of Violation - The violations by Respondent alleged in Counts II through III of the Complaint address emergency response matters and concerns. Respondent's 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 be able to respond properly to chemical releases at and from facilities in their communities and in surrounding communities. Respondent's violations, therefore, pose not only a potential for harm to the EPCRA regulatory system, but also the protection of the environment and human health.

Extent Level - The Extent Level for Respondent's violations as alleged in Counts II and III of the Complaint is Level 1 due to Respondent's failure to notify the SERC and LEPC of the Butadiene Release for more than two hours after gaining knowledge of the release.

Gravity Level - The Gravity Level for Respondent's violation as alleged in Counts II and III of the Complaint is Level A due to the fact that the quantity of 1,3-butadiene (approximately 1,154 pounds) released from the Respondent's Dover facility was greater than 10 times its RQ of 10 pounds. As a result, a Gravity Level of A for these Counts incorporates and takes into account the nature and extent of harm posed by Respondent's violations concerning the Release.

Base Penalty Total - In light of the adjustments to penalties instituted by the DCIA and the Penalty Inflation Rule, and the fact that the allegations of Counts II and III of the

Complaint address violations by Respondent which occurred after March 15, 2004, an Extent Level of 1 and Gravity Level of A for Respondent's violations as alleged in Counts II and III of the Complaint result in a Base Penalty of $56,680.00.

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 II through IV and VI of the Complaint.

Proposed Penalty - Counts II - III: **$56,680.00**

TOTAL PROPOSED EPCRA PENALTY: $ 56,680.00

TOTAL PROPOSED CERCLA AND EPCRA PENALTIES: $101,010.00

EPA will consider, among other factors, Respondent's ability to pay to adjust the proposed civil penalty assessed in this 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 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

Within 30 days of receipt of this Complaint, Respondent may request a hearing before an EPA Administrative Law Judge on the Complaint. At the hearing, Respondent may contest any material fact as well as the appropriateness of any penalty amount. To request a hearing, Respondent must file a written Answer within 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 will be deemed to be a denial of the allegation. The Answer should also contain: the circumstances or arguments that are alleged to constitute the grounds of any defense; the facts that Respondent disputes; the basis for opposing any proposed relief; and 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 by 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 30 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 file an Answer could result in the filing of

a Motion for Default 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 Allison F. Gardner, Assistant Regional Counsel, the attorney assigned to represent EPA in this matter, at:

Allison F. Gardner (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Respondent's rights to appeal an Order assessing a CERCLA penalty are set forth in 40 C.F.R. §§ 22.30 and 22.39(b), and in Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), which provides in relevant part that:

> Any person against whom a civil penalty is assessed under this subsection 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 from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President.

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. 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 Allison F. Gardner (3RC42), 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.

In accordance with 40 C.F.R. § 22.18(a)(3), upon receipt of payment in full, 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 CERCLA penalty shall be made by sending a cashier's check made payable to the "EPA Hazardous Substances Superfund," in care of:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Payment of the EPCRA penalty shall be made by sending a cashier's check made payable to the "Treasurer of the United States of America," in care of:

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

The checks should reference the name and docket numbers of this Complaint. At the same time payment is made, copies of the checks shall be mailed to: Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Allison F. Gardner (3RC42), Assistant Regional Counsel, 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:

Allison F. Gardner (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2631

Please note that a request for, the scheduling of, or the participation in, an informal settlement conference **does not** extend the 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: The Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste

and Emergency Response; and 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 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 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 Fed. Reg. 7121, (Feb. 13, 2004), 40 C.F.R. Part 19 ("Penalty Inflation Rule")

C. *Enforcement Response Policy for Section 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 ("ERP")*, dated September 30, 1999

D. Detailed Summary of CERCLA and EPCRA 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 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 including those identified in this Complaint, and to require further action as necessary to respond to the release addressed in this Complaint.

_____ _____

DATE

Complainant
James J. Burke, Director
Hazardous Site Cleanup Division

In the Matter of:	)	**EPA Docket No.: CERC-03-2008-0344**
	)	**EPA Docket No.: EPCRA-03-2008-0344**
Dow Reichhold Specialty Latex, LLC 2400 Ellis Road Durham, North Carolina 27703,	)	
Respondent.	)	**First Amended Administrative Complaint and Notice of Opportunity for a Hearing filed under Sections 103 and 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9603, 9609, and Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11004, 11045**
Dow Reichhold Specialty Latex, LLC 144 Fork Branch Road Dover, Delaware 19904,	)	
Facility.	)	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant United States Environmental Protection Agency's First Amended 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 First Amended 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. Jeffrey L. Welker
President
Dow Reichhold Specialty Latex, LLC
2400 Ellis Road
Durham, North Carolina 27703

_____
DATE

_____
Allison F. Gardner
Assistant Regional Counsel
Counsel for Complainant
(215) 814-2631