

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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IN THE MATTER OF)

)
HUBBARD-HALL, INC.)

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)
563 S. Leonard St.)
Waterbury, CT 06720)

)
Respondent)

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)
)
Proceeding under Section 113(d) of the)
Clean Air Act,)
42 U.S.C. § 7413(d))
_____)

Docket No: CAA-01-2011-0128

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency (“EPA”) issues this administrative Complaint and Notice of Opportunity for Hearing pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d). This action is subject 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, 40 C.F.R. Part 22. The authority to issue this Complaint has been delegated to the Director of the Office of Environmental Stewardship, Region 1 (“Complainant”).

2. This Complaint alleges that Hubbard-Hall, Inc. (“Respondent”) failed to submit a risk management plan (“RMP”) for hydrofluoric acid (50% or greater) before using it in a process in an amount that exceeded the regulatory threshold, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations at 40 C.F.R. Part 68.

3. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

II. APPLICABLE STATUTES AND REGULATIONS

CAA Statutory and Regulatory Authority

4. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of the accidental release of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released, and Section 112(r)(5), 42 U.S.C. § 7412(r)(5), requires EPA to establish for each regulated substance a threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a risk management plan ("RMP").

5. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated RMP regulations, found at 40 C.F.R. Part 68 ("Part 68"). Section 68.130 of 40 C.F.R. lists the substances regulated under Part 68 ("RMP chemicals" or "regulated substances") and their associated threshold quantities.

6. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b)

three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

7. A “process” is defined by 40 C.F.R. § 68.3 as any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

8. Each process in which a regulated substance is present in more than a threshold quantity (a “covered process”) is subject to one of three risk management programs, whose eligibility requirements are set forth in 40 C.F.R. § 68.10. Program 1 is the least comprehensive, and Program 3 is the most comprehensive.

9. Under 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in certain specified NAICS codes or subject to the OSHA process safety management standard set forth at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

10. Under Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), it is unlawful for any person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

11. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA’s 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701,

provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$32,500 per day for violations occurring between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for violations occurring after January 12, 2009.

III. GENERAL ALLEGATIONS

12. Respondent is a corporation organized under the laws of the State of Connecticut with a usual place of business at 563 S. Leonard St., Waterbury, CT 06720. Respondent also operates a facility at this location.

13. As a corporation, Respondent is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

14. At all times relevant to the Complaint, Respondent processed, handled and/or stored hydrofluoric acid (70% concentration or greater) at the facility.

15. The chemical hydrofluoric acid (50% concentration or greater) is a regulated toxic substance listed under 40 C.F.R. § 68.130.

16. The facility is a building or structure from which an accidental release may occur and is therefore a “stationary source,” as that term is defined Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

17. Respondent is the “owner or operator,” as that term is defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

18. On July 21, 2010, a duly authorized representative of EPA conducted a compliance evaluation inspection of the facility (the “EPA inspection”) to determine its compliance with Section 112(r) of the CAA and the Emergency Planning Community Right-to-Know Act (“EPCRA”).

19. On July 13, 2011, EPA issued a Notice of Violation, Administrative Order, and Request for Information (“Information Request”) concerning the facility, pursuant to Sections 112(r) and 114 of the CAA, 42 U.S.C. §§ 7412(r) and 7414.

20. On August 23, 2011, Respondent submitted to EPA a response (“August 23 Letter”) to the Information Request.

21. Under 40 C.F.R. § 68.130, the threshold quantity for accidental release prevention for hydrofluoric acid (50% concentration or greater) is 1,000 pounds. Approximately 2.55 55-gallon drums or at least 1,426 pounds of 70% hydrofluoric acid must be present to reach the threshold.

22. According to information gathered in the course of EPA’s inspection and the August 23 Letter, Respondent processed and stored more than the threshold amount of the regulated substance hydrofluoric acid (70% concentration or greater) at various times in 2006 through 2010.

23. As the owner or operator of a stationary source that has more than the threshold amount of a regulated substance in a covered process, Respondent is subject to the RMP provisions of Part 68.

24. Based on observations by the EPA inspector and aerial photos, there are approximately thirteen industrial or commercial buildings within 0.2 miles of the process at the facility.

25. As a follow up to the EPA inspection, EPA conducted an “Offsite Consequences Analysis” (“OCA”) for the hydrofluoric acid (70% concentration) stored at the facility.

26. The OCA for the hydrofluoric acid shows that the distance to a toxic endpoint for a worst case release of hydrofluoric acid from the facility is 0.2 miles, which is greater than the distance from the facility’s covered process to a public receptor.

27. The facility’s storage and processing of hydrofluoric acid (70% concentration) is subject to the requirements of Program 2, in accordance with the requirements of 40 C.F.R.

§ 68.10(a) through (d), because the distance to a toxic endpoint for a worst case release of hydrofluoric acid is greater than the distance to a public receptor, but the process does not meet the eligibility requirements for Program 3.

28. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), EPA obtained from the Department of Justice a waiver of the twelve-month limitation on EPA's authority to initiate administrative cases.

IV. CAA VIOLATION: Failure to Submit an RMP

29. Complainant realleges and incorporates by reference paragraphs 1 through 28 of this Complaint.

30. During June 2006 through September 2010, Respondent intermittently stored or processed hydrofluoric acid in a concentration of 50% or greater, a regulated substance, at the facility in quantities exceeding the 1,000 lb. threshold set forth in 40 C.F.R. § 68.130.

31. Such storage and processing of hydrofluoric acid are each a "covered process," as that term is defined in 40 C.F.R. § 68.3.

32. Pursuant to 40 C.F.R. §§ 68.10 and 68.12, Respondent was required to implement a Level 2 Risk Management Program for the processing and storage of hydrofluoric acid (50% or greater) in quantities over the 1,000 lb. threshold.

33. Under 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, Respondent was required to prepare and submit a RMP for hydrofluoric acid (70% concentration) documenting compliance with the RMP regulations before it began storing hydrofluoric acid (70% concentration) at the facility.

34. By failing to submit the RMP for hydrofluoric acid before processing and storing it at the facility in amounts that exceeded the regulatory threshold, from approximately June 1,

2006 to September 30, 2010, Respondent violated Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), and 40 C.F.R. §§ 68.10(a), 68.12 and 68.150.

35. Respondent is therefore subject to an assessment of penalties under Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. Part 19.

V. PROPOSED CIVIL PENALTY

36. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended, authorize EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between March 15, 2004 and January 12, 2009 are subject to a penalty of up to \$32,500 per day; and violations that occur after January 12, 2009 are subject to penalties of up to \$37,500 per day of violation.

37. Based on the foregoing allegations and pursuant to the authority of Section 113(d) of the CAA, 42 U.S.C. § 7413(d), EPA seeks to assess civil penalties of up to \$32,500 per day for approximately 196 days of violation for Respondent's failure to submit an RMP from July 1, 2008 through January 12, 2009, and civil penalties of up to \$37,500 per day for approximately 625 days of violation from January 13, 2009 to September 30, 2010. However, the CAA penalty shall not exceed \$295,000 without a waiver from the Department of Justice, in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the DCIA, 31 U.S.C. § 3701.

38. This violation is significant because an RMP plan helps facility personnel and emergency responders to assess and manage the hazards that are posed by chemicals at a facility so that the threat and impacts of releases are minimized. Hydrofluoric acid is an extremely toxic chemical, and the facility is located within 0.2 miles (or about 1,000 feet) of commercial or industrial buildings. The dangers associated with hydrofluoric acid were increased by the

presence of multiple flammable and toxic chemicals that could have been implicated in any fire or explosion.

39. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty and explaining how the proposed penalty was calculated, as required by 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; Final Rule,” 40 C.F.R. Part 22 (the “Consolidated Rules of Practice”), a copy of which is enclosed with this Complaint.

40. In determining the amount of the CAA penalty to be assessed, EPA will take into account the statutory factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e). These factors include the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

41. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22. Any request for a hearing must be included in Respondent’s written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

42. In its Answer, Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is

entitled to judgment as a matter of law. 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 and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

43. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

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

Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Joanna Jerison, the attorney assigned to represent EPA and who is designated to receive service in this matter at:

Joanna Jerison
Legal Enforcement Manager
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel: (617) 918-1781

44. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

VII. INFORMAL SETTLEMENT CONFERENCE

45. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

46. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondent or its representative should contact Joanna Jerison, Legal Enforcement Manager, at (617) 918-1781.

VIII. CONTINUED COMPLIANCE OBLIGATION

47. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with Section 112(r)(7) of the CAA, 42 U.S.C. §7412(r)(7), and implementing regulations at 40 C.F.R. Part 68.

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

09/29/11
Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	
)	
HUBBARD-HALL, INC.,)	Docket No: CAA-01-2011-0128
563 S. Leonard Street)	
Waterbury, CT)	
)	
RESPONDENT)	
)	

CERTIFICATE OF SERVICE

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

Original and one copy,
hand-delivered:

Ms. Wanda Rivera
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested, with
copy of 40 C.F.R. Part 22:

Andrew J. Skipp, President
Hubbard-Hall, Inc.
563 South Leonard Street
Waterbury, CT 06720

Dated: 9/30/11



Joanna Jerison
Legal Enforcement Manager
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel (617) 918-1781
Fax (617) 918-0148