

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)

The Sousa Corporation)
1045 New Britain Avenue)
West Hartford, CT 06110)

Respondent.)
_____)

Docket No. EPCRA-01-2009-0049

**ADMINISTRATIVE COMPLAINT
AND
NOTICE OF
OPPORTUNITY FOR HEARING**

STATEMENT OF AUTHORITY

1. This is a civil administrative action issued under the authority of Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter “EPCRA”), and 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 (“Part 22 Rules”).

2. The Complaint is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or “Complainant”). This Complaint alleges that The Sousa Corporation (“Respondent”) violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the federal regulations that set out in greater detail the Section 312 requirements, 40 C.F.R. Part 370.

STATUTORY AND REGULATORY BASIS

3. Pursuant to Section 312(a) of EPCRA and 40 C.F.R. §§ 370.20 and 370.25, the owner or operator of any facility that is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of

1970 and regulations promulgated thereunder must prepare and submit an emergency and hazardous chemical inventory form to the local emergency planning committee (“LEPC”), the state emergency response commission (“SERC”), and the local fire department with jurisdiction over the facility.

4. Pursuant to Section 312(a) of EPCRA and 40 C.F.R. §§ 370.20 and 370.25, inventory forms containing Tier I information, as detailed in 40 C.F.R. § 370.40, must be submitted on or before March 1 of each year. With respect to any specific hazardous chemical at the facility, the owner or operator may submit a Tier II form, in accordance with 40 C.F.R. § 370.41, in lieu of the Tier I information.

5. Pursuant to Sections 312(a) and (d) of EPCRA and 40 C.F.R. §§ 370.20, 370.25, and 370.41, Tier II forms must contain information on hazardous chemicals present at the facility at any time during the preceding calendar year at levels that equal or exceed the minimum threshold level (“MTL”) set forth in 40 C.F.R. § 370.20(b).

GENERAL ALLEGATIONS

6. Respondent is a corporation incorporated under the laws of the State of Connecticut, with its principal place of business at 1045 New Britain Avenue, West Hartford, Connecticut 06110.

7. Respondent owns and operates a commercial metal heat treating facility, located at 1045 New Britain Avenue, West Hartford, Connecticut 06110 (the “Facility”).

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

9. Respondent is an owner or operator of a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.2.

10. During calendar year 2007, Respondent stored anhydrous ammonia, a “hazardous chemical” as defined under 29 C.F.R. § 1910.1200(c) and an “extremely hazardous chemical” as defined in 40 C.F.R. Part 355, Appendix A, in a quantity that exceeds the MTL set forth in 40 C.F.R. § 370.20(b)(1) at the Facility.

11. During calendar year 2007, Respondent stored quench oil, a “hazardous chemical” as defined under 29 C.F.R. § 1910.1200(c), in a quantity that exceeds the MTL set forth in 40 C.F.R. § 370.20(b)(4) at the facility.

12. During calendar year 2007, Respondent was required to prepare or have available a MSDS for anhydrous ammonia and quench oil at the Facility.

13. On May 21, 2008, an authorized EPA employee inspected the Facility. The purpose of the inspection was to determine Respondent’s compliance with the reporting requirements contained EPCRA Sections 302, 311, and 312, 42 U.S.C. §§ 11002, 11021, and 11022.

Count I

14. The foregoing paragraphs 1 through 13 are incorporated by reference as if fully set forth herein.

15. During calendar year 2007, Respondent stored anhydrous ammonia at the Facility in a quantity that exceeds the MTL of 500 pounds, as set forth in 40 C.F.R. § 370.20(b)(1).

16. During calendar year 2007, Respondent stored quench oil at the Facility in a quantity that exceeds the MTL of 10,000 pounds, as set forth in 40 C.F.R. § 370.20(b)(4).

17. Respondent was required to submit a Tier II emergency and hazardous chemical inventory form for anhydrous ammonia and quench oil for calendar year 2007 to the SERC, LEPC, and the local fire department with jurisdiction over the Facility on or before March 1, 2008.

18. Respondent failed to submit a Tier II form to the SERC, LEPC, and the local fire department with jurisdiction over the Facility by March 1, 2008, in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.25.

PROPOSED CIVIL PENALTY

19. Section 325(c) of EPCRA, 42 U.S.C. §11045(c), and 40 C.F.R. § 370.5(b), as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) and EPA's Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, provide that any person who violates any requirement of Section 312 of EPCRA after March 15, 2004 and on or before January 12, 2009 shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each such violation.

20. The proposed civil penalty has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). For purposes of determining the amount of any penalty to be assessed, EPA considered the nature, circumstances, extent, and gravity of the violation, 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 may require. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to

EPA's "Interim Final 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, as amended March 3, 2005 and June 5, 2006) ("ERP"), a copy of which is enclosed with this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

21. The ERP states that a base penalty should be determined by considering the "extent" and "gravity" of the violation. The extent of the violation measures the deviation from the requirements to timely submit reports. The gravity of the violation takes into account the amount of chemicals involved in the violation.

22. On the basis of the above variables, EPA has determined the amount of the civil penalty to be assessed against Respondent. As described below, this penalty was computed by using a multiple stage process in accordance with the ERP.

23. The first stage of calculating the base penalty requires a determination of the extent of the violation. Respondent failed to submit a Tier II chemical inventory form to the SERC, LEPC, or local fire department with jurisdiction over the Facility within 30 calendar days of the reporting deadline. Thus, the applicable extent of violation alleged in Count I of this Complaint is "Level 1."

24. The second stage of calculating the base penalty requires a determination of the gravity of the violation. Respondent failed to report hazardous chemicals in amounts greater than five but less than ten times the reporting threshold. Thus, the applicable gravity of the violation alleged in Count I of this Complaint is "Level B."

25. Under the ERP, EPA has discretion to select an amount within the range specified in the appropriate matrix box. Based on the circumstances of the violation, EPA selected the lowest value within the Level 1-B matrix box for Respondent's failure to timely submit the required Tier II form, resulting in a penalty of \$16,120.

26. Pursuant to the ERP, EPA made an adjustment to the base penalty amount for Count I based on the size of Respondent's business, resulting in a 15% reduction of the base penalty to \$13,700.

27. After consideration of Respondent's failure to voluntarily disclose the violation, lack of prior history of violations, degree of culpability, and economic benefit, the Complainant proposes no further adjustments to the gravity-based penalty amount for the Section 312 violation.

28. EPA developed the proposed penalty as stated in this Complaint based on the best information available to the Agency at this time. The penalty amount may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

29. Based upon the violation cited in this Complaint, and taking into account the nature, circumstances, and gravity of this violation, the Complainant proposes that Respondent be assessed a civil penalty in the amount of \$13,700 for the violation alleged in Count I of this Complaint.

30. Under Section 22.18(a) of the Consolidated Rules of Practice, the Respondent has the option of resolving this matter at any time by paying the penalty proposed in this Complaint in full. Payment of the penalty must be made by submitting a bank, cashier's or certified check payable to the Treasurer, United States of America, to:

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

The penalty payment check must reference the title of this proceeding, "In the Matter of The Sousa Corporation," and its Docket Number, EPCRA-01-2009-0049.

31. At the time of payment, Respondent shall send notice of such payment and a copy of the check to:

Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

32. If the Respondent pays the proposed penalty in full within thirty (30) days after receiving this Complaint, then the Respondent need not file an Answer to the Complaint. If the Respondent wishes to resolve this matter without having to file an Answer but needs additional time in which to do so, the Respondent may file a written statement with the Regional Hearing Clerk at the address above within thirty (30) days of receiving the Complaint. The written statement must specify that the Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint. Failure to make such payment within the sixty (60) days may subject the Respondent to a default action. Upon receipt of payment in full, the Regional Judicial Officer shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

33. Payment of the civil penalty alone does not satisfy Respondent's legal obligation to file complete and accurate emergency and hazardous chemical inventory forms (Tier I or Tier II forms). If Respondent chooses to remit the proposed penalty, it is still under a legal duty to

submit complete and accurate Tier I or Tier II forms. Failure or refusal to file such forms may subject Respondent to additional civil penalties of up to \$37,500 per day of violation.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with Part 22, a copy of which is enclosed with this Complaint.

To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and having the above-cited penalty assessed without further proceedings, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

Respondent should also send a copy of the Answer and all other documents which Respondent files in this action to Amanda J. Helwig, the attorney assigned to represent EPA in this matter, at:


Amanda J. Helwig
Enforcement Counsel
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (SEL)
Boston, Massachusetts 02114-2023

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may contact Amanda J. Helwig, the attorney assigned to represent EPA in this matter, at (617) 918-1180 to discuss the legal matters relating to this Complaint or to arrange for an informal settlement conference. Respondent may wish to be represented by counsel at the informal conference. In the event a 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 Judicial Officer.

Please note that a request for an informal settlement conference does not enlarge the thirty-day period within which a written Answer must be submitted to avoid default.

9/21/09
Date



Joel Blumstein, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1