



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

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Tom Miles, President
Pork King Packing, Inc.
8808 South Illinois Route 23
P.O. Box 253
Marengo, IL 60152

Re: In the Matter of Pork King Packing, Inc., Marengo, Illinois
Docket No: EPCRA-05-2008-0024

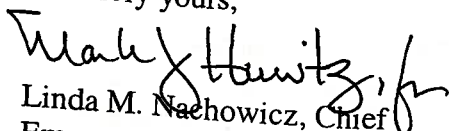
Dear Mr. Miles:

I have enclosed a Complaint filed against Pork King Packing, Inc., under Sections 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§11045(c)(1) and (c)(2). The Complaint alleges violations of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 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 Jeffery Trevino, 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 James Entzminger at (312) 886-4062. If you have any legal questions, please contact Jeffery Trevino, Associate Regional Counsel at (312) 886-6729.

Sincerely yours,


Linda M. Nachowicz, Chief
Emergency Response Branch 2

Enclosures (3) Administrative Complaint
Enforcement Response Policy
Civil Administrative Rules of Practice

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. EPCRA-05-2008-0024
)
Pork King Packing, Inc.) Proceeding to Assess a Civil Penalty Under
Marengo, Illinois 60152) Sections 325 (c)(1) and (c)(2) of the
) Emergency Planning and Community Right-to-
Respondent.) Know Act of 1986
)
_____)

2008 AUG -8 PM 2: 12

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V

Complaint

1. This is an administrative proceeding to assess a civil penalty under Sections 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C §§ 11045(c)(1) and (c)(2).
2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 2, United States Environmental Protection Agency (EPA), Region 5.
3. The Respondent is Pork King Packing, Inc., a corporation doing business in the State of Illinois.

Statutory and Regulatory Background

4. Section 311 of EPCRA, 42 U.S.C. § 11021, 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 submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and the fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is

lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

5. 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 OSHA to prepare or have available an MSDS for a hazardous chemical, to prepare and submit to the SERC, community emergency coordinator for the LEPC and 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 1 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 EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

6. Section 311 of EPCRA, 42 U.S.C. § 11021 and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

7. 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, MSDS.

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

General Allegations

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

10. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 8808 South Illinois Route 23, Marengo, Illinois (the facility).

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

12. 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.

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

14. Anhydrous ammonia (CAS #7664-41-7) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

15. Anhydrous ammonia (CAS #7664-41-7) 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).

16. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

17. Anhydrous ammonia (CAS #7664-41-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

18. Sulfuric acid (CAS #7664-93-7) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

19. Sulfuric acid (CAS #7664-93-7) 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).

20. Sulfuric acid (CAS #7664-93-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

21. Sulfuric acid (CAS #7664-93-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

22. As of December 31, 2003, anhydrous ammonia and sulfuric acid were present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

23. During at least one period of time in calendar year 2003, anhydrous ammonia and sulfuric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

24. During at least one period of time in calendar year 2004, anhydrous ammonia and sulfuric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

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

26. OSHA requires Respondent to prepare, or have available, an MSDS for anhydrous ammonia and sulfuric acid.

27. Respondent was required to submit to the SERC, LEPC, and fire department on or before October 17, 1987 or within 90 days after the hazardous chemical or extremely hazardous

substance was present at the facility in quantities greater than the minimum threshold level, a MSDS for anhydrous ammonia and sulfuric acid or a list including anhydrous ammonia and sulfuric acid.

28. Respondent was required to submit to the SERC, the LEPC, and fire department a completed emergency and hazardous chemical inventory form including anhydrous ammonia and sulfuric acid on or before March 1, 2004, for calendar year 2003.

29. Respondent was required to submit to the SERC, the LEPC, and fire department a completed emergency and hazardous chemical inventory form including anhydrous ammonia and sulfuric acid on or before March 1, 2005, for calendar year 2004.

30. Respondent was required to submit to the SERC, the LEPC, and fire department a completed emergency and hazardous chemical inventory form including anhydrous ammonia and sulfuric acid on or before March 1 2008, for calendar year 2007.

31. On March 29, 2005, a release occurred from Respondent's facility of an unknown amount of chlorine.

32. At all times relevant to this Complaint, the Illinois State Emergency Response Commission was the SERC for Illinois under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

33. At all times relevant to this Complaint, the McHenry County Local Emergency Planning Committee was the LEPC for McHenry County, Illinois under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

34. At all times relevant to this Complaint, the Manengo Fire Protection District was the fire department with jurisdiction over the facility.

Count 1

35. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

36. Respondent submitted to the SERC an MSDS for anhydrous ammonia or a list showing anhydrous ammonia on June 22, 2005.

37. Each day Respondent failed to submit to the SERC an MSDS or a list for anhydrous ammonia by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

Count 2

38. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

39. Respondent submitted to the LEPC a MSDS for anhydrous ammonia or a list showing anhydrous ammonia on June 22, 2005.

40. Each day Respondent failed to submit to the LEPC an MSDS or a list for anhydrous ammonia by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

Count 3

41. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

42. Respondent submitted to the Magengo Fire Protection District, an MSDS for anhydrous ammonia or a list showing anhydrous ammonia on June 22, 2005.

43. Each day Respondent failed to submit to the Marengo Fire Protection District a MSDS or a list for anhydrous ammonia, by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

Count 4

44. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

45. Respondent submitted to the SERC an MSDS for sulfuric acid or a list showing sulfuric acid on June 22, 2005.

46. Each day Respondent failed to submit to the SERC an MSDS or a list for sulfuric acid by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

Count 5

47. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

48. Respondent submitted to the LEPC a MSDS for sulfuric acid or a list showing sulfuric acid on June 22, 2005.

49. Each day Respondent failed to submit to the LEPC an MSDS or a list for sulfuric acid by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

Count 6

50. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

51. Respondent submitted to the Magengo Fire Protection District, an MSDS for sulfuric acid or a list showing sulfuric acid on June 22, 2005.

52. Each day Respondent failed to submit to the Marengo Fire Protection District a MSDS or a list for sulfuric acid, by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

Count 7

53. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

54. Respondent submitted to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid on June 22, 2005, for calendar year 2003.

55. Each day Respondent failed to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2004, for calendar year 2003 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

Count 8

56. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

57. Respondent submitted to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid on June 22, 2005, for calendar year 2004.

58. Each day Respondent failed to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical

Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2005, for calendar year 2004 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

Count 9

59. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

60. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid on April 11, 2008, for calendar year 2007.

61. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid 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 10

62. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

63. As of July 16, 2008, Respondent had not submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid for calendar year 2007.

64. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid 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 11

65. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

66. Respondent submitted to the Magengo Fire Protection District a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid on April 11, 2008, for calendar year 2007.

67. Each day Respondent failed to submit to the Magengo Fire Protection District a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Proposed EPCRA Penalty

68. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 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 \$11,000 per day of violation for EPCRA 311 violations that occur on or after January 31, 1997.

69. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes 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 after March 15, 2004.

70. 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 EPA assess a civil penalty against Respondent of \$152,841.00 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 311 (SERC, anhydrous ammonia):	\$ 11,000.00
Count 2 EPCRA Section 311 (LEPC, anhydrous ammonia):	\$ 11,000.00
Count 3 EPCRA Section 311 (fire dept, anhydrous ammonia):	\$ 11,000.00
Count 4 EPCRA Section 311 (SERC, sulfuric acid):	\$ 6,447.00
Count 5 EPCRA Section 311 (LEPC, sulfuric acid):	\$ 6,447.00
Count 6 EPCRA Section 311 (fire dept, sulfuric acid):	\$ 6,447.00
Count 7 EPCRA Section 312 (2003):	\$ 1,500.00
Count 8 EPCRA Section 312 (2004):	\$ 1,500.00
Count 9 EPCRA Section 312(a) (SERC, 2007):	\$ 32,500.00
Count 10 EPCRA Section 312(a) (LEPC, 2007):	\$ 32,500.00
Count 11 EPCRA Section 312(a) (fire dept, 2007):	\$ 32,500.00
TOTAL EPCRA SECTION 325 PENALTY	\$152,841.00

71. Complainant calculated the EPCRA penalties by evaluating the facts and circumstances of this case 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 (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.

Filing and Service of Documents

Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Jeffery Trevino to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Jeffery Trevino at (312) 886-6729. His address is:

Jeffery Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

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

Respondent must include the case name (Pork King Packing, Inc.), and docket number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and Jeffery Trevino at the addresses given above, and to:

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Answer and 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 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.

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'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 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 James Entzminger at (312) 886-4062.

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

8/8/08
Date

Mark H. Hewitt for
Linda M. Nachowicz, Chief
Emergency Response Branch 2
Superfund Division

In the Matter of:
Pork King Packing, Inc., Marengo, Illinois
Administrative Complaint, EPCRA Sections 311 and 312
Docket No. EPCRA-05-2008-0024

In the Matter of:
Pork King Packing, Inc., Marengo, Illinois
Administrative Complaint, EPCRA Sections 311 and 312
Docket No. EPCRA-05-2008-0024

Certificate of Service

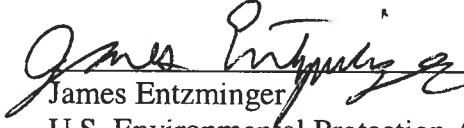
I, James Entzminger, certify that I filed the original and one copy of the Complaint, docket number EPCRA-05-2008-0024 with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a copy to the Respondent by first-class, postage prepaid, certified mail, 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:

Mr. Tom Miles
Pork King Packing, Inc.
8808 South Illinois Route 23
P.O. Box 253
Marengo, IL 60152

John J. Conway, Esq.
Sullivan Hincks & Conway
120 West 22nd Street, Suite 100
Oak Brook, IL 60523

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On the 8 day of August, 2008.


James Entzminger
U.S. Environmental Protection Agency
Region 5