



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 17 2009

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0182 9764

Mr. Elliot Badzin  
President  
SuperClean Brands, Inc.  
1380 Corporate Center Curve  
Suite 200  
Eagan, Minnesota 55121

In the Matter of: SuperClean Brands, Inc., Docket No. **EPCRA-05-2009-0016**

Dear Mr. Badzin:

I have enclosed the Complaint filed by the U.S. Environmental Protection Agency, Region 5, against SuperClean Brands, Inc. under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c).

As provided in the Complaint, if you wish 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 (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604 within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference or if you have any questions about this matter, please contact me, or Terry Stanuch, Associate Regional Counsel, at (312) 886-8044.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero  
Director  
Land and Chemicals Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	Docket No. EPCRA-05-2009-0016
	)	
SuperClean Brands, Inc.	)	<b>Proceeding to Assess a Civil Penalty</b>
St. Paul, Minnesota	)	<b>Under Section 325(c) of the Emergency</b>
	)	<b>Planning and Community Right-to-Know</b>
<b>Respondent.</b>	)	<b>Act of 1986, 42 U.S.C. § 11045(c)</b>
<hr/>		

RECEIVED

MAR 17 2009

**Complaint**

1. This is an administrative action to assess a civil penalty under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c).

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

2. Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is SuperClean Brands, Inc., a corporation doing business in the State of Minnesota.

**Statutory and Regulatory Background**

4. The U.S. EPA promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rule at 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048.

5. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide, in part, that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees, is in Standard Industrial Classification (SIC) 20 through 39, and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c)

and listed at 40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f) and in 40 C.F.R. §§ 372.25, 372.27 and 372.28.

6. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to complete and submit to the Administrator of U.S. EPA, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f).

7. The U.S. EPA published the Toxic Chemical Release Inventory Reporting Form, U.S. EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R. § 372.85 pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g).

8. All persons required to report pursuant to Section 313(b) of EPCRA, 42 U.S.C. § 11023(b) must use Form R according to Section 313(a).

9. In accordance with Section 313(a) of EPCRA, 42 U.S.C. § 11023(b), and pursuant to the instructions specified on Form R, all Form R submittals must be sent to the following address:

TRI Data Processing Center  
P.O. Box 1513  
Lanham, MD 20703-1513  
Attn: Toxic Chemical Release Inventory

10. The Administrator of U.S. EPA may prescribe regulations as may be necessary to carry out EPCRA. 42 U.S.C. § 11048.

11. Sections 325(c)(1) and (3) of EPCRA, 42 U.S.C. §§ 11045(c)(1) and (3), authorize the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023. The Federal Civil Penalties Inflation Adjustment Act

of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. Consequently, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 that occurred after March 15, 2004, and \$37,500 per day for each violation of Section 313 that occurs after January 12, 2009, pursuant to Sections 325(c)(1) and (3) of EPCRA, 42 U.S.C. §§ 11045(c)(1) and (3), and 40 C.F.R. Part 19.

### **General Allegations**

12. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
13. Respondent is a corporation incorporated in the State of Minnesota.
14. Respondent owned or operated a facility located at 51 Maryland Avenue East, St. Paul, Minnesota, during calendar years 2003, 2004 and 2005.
15. Respondent's facility consisted of buildings, equipment and structures and other stationary items which were located on a single site or on contiguous or adjacent sites and which were owned by the same person, entity, or corporation.
16. During the calendar years 2003, 2004 and 2005, Respondent employed at its facility the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.
17. Respondent's facility is covered by SIC Code 2842.
18. During calendar years 2003, 2004 and 2005, Respondent "processed," as defined by 40 C.F.R. § 372.3, toxic chemicals identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c),

and listed at 40 C.F.R. § 372.65, in quantities exceeding the thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. §§ 372.25, 372.27 or 372.28.

19. On October 27, 2005 and October 18, 2006, a representative of the U.S. EPA inspected Respondent's facility.

### **Count I**

20. Complainant incorporates paragraphs 1 through 19 of this Complaint as if set forth in this paragraph.

21. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is processed during the 2003 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

22. During the 2003 calendar year, Respondent's facility processed 34,000,000 pounds of methanol, CAS No. 67-56-1.

23. Methanol is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

24. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA a Form R for methanol for the 2003 calendar year on or before July 1, 2004.

25. Respondent failed to submit to the Administrator of U.S. EPA a Form R for methanol for the 2003 calendar year on or before July 1, 2004.

26. As of February 27, 2009, Respondent still has not submitted to the Administrator of U.S. EPA a Form R for methanol for the 2003 calendar year.

27. Respondent's failure to submit to the Administrator of U.S. EPA a Form R for methanol for the 2003 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

### Count II

28. Complainant incorporates paragraphs 1 through 19 of this Complaint as if set forth in this paragraph.

29. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is processed during the 2004 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

30. During the 2004 calendar year, Respondent's facility processed 29,000,000 pounds of methanol, CAS No. 67-56-1.

31. Methanol is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

32. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA a Form R for methanol for the 2004 calendar year on or before July 1, 2005.

33. Respondent failed to submit to the Administrator of U.S. EPA a Form R for methanol for the 2004 calendar year on or before July 1, 2005.

34. Respondent finally submitted to the Administrator of U.S. EPA a Form R for methanol for the 2004 calendar year, on September 30, 2005.

35. Respondent's failure to timely submit to the Administrator of U.S. EPA a Form R for methanol for the 2004 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

### **Count III**

36. Complainant incorporates paragraphs 1 through 19 of this Complaint as if set forth in this paragraph.

37. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is processed during the 2005 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

38. During the 2005 calendar year, Respondent's facility processed 31,400,000 pounds of methanol, CAS No. 67-56-1.

39. Methanol is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

40. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA a Form R for methanol for the 2005 calendar year on or before July 1, 2006.

41. Respondent failed to submit to the Administrator of U.S. EPA a Form R for methanol for the 2005 calendar year on or before July 1, 2006.

42. Respondent finally submitted to the Administrator of U.S. EPA a Form R for methanol for the 2005 calendar year, on October 17, 2006.

43. Respondent's failure to timely submit to the Administrator of U.S. EPA a Form R for methanol for the 2005 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

### **Count IV**

44. Complainant incorporates paragraphs 1 through 19 of this Complaint as if set forth in this paragraph.

45. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is processed during the 2004 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

46. During the 2004 calendar year, Respondent's facility processed 43,000 pounds of ethylene glycol, CAS No. 107-21-1.

47. Ethylene glycol is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

48. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA a Form R for ethylene glycol for the 2004 calendar year on or before July 1, 2005.

49. Respondent failed to submit to the Administrator of U.S. EPA a Form R for ethylene glycol for the 2004 calendar year, which was required on or before July 1, 2005.

50. Respondent finally submitted to the Administrator of U.S. EPA a Form R for ethylene glycol for the 2004 calendar year, on June 10, 2008.

51. Respondent's failure to timely submit to the Administrator of U.S. EPA a Form R for ethylene glycol for the 2004 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

#### **Count V**

52. Complainant incorporates paragraphs 1 through 19 of this Complaint as if set forth in this paragraph.

53. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is processed during the 2005 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).



54. During the 2005 calendar year, Respondent's facility processed 86,000 pounds of ethylene glycol, CAS No. 107-21-1.

55. Ethylene glycol is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

56. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA a Form R for ethylene glycol for the 2005 calendar year on or before July 1, 2006.

57. Respondent failed to submit to the Administrator of U.S. EPA a Form R for ethylene glycol for the 2005 calendar year on or before July 1, 2006.

58. Respondent finally submitted to the Administrator of U.S. EPA a Form R for ethylene glycol for the 2005 calendar year, on June 10, 2008.

59. Respondent's failure to timely submit to the Administrator of U.S. EPA a Form R for ethylene glycol for the 2005 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

**Proposed Civil Penalty**

Complainant proposes that the U.S. EPA Administrator assess a civil penalty against Respondent for the EPCRA violations alleged in this Complaint as follows:

**Count I**

Failure to submit a Toxic Chemical Release Inventory Reporting Form R for methanol for calendar year 2003:

CAS No. 67-56-1.....\$21,922

**Count II**

Failure to timely submit a Toxic Chemical Release Inventory Reporting Form R for methanol for calendar year 2004:

CAS No. 67-56-1..... \$11,196

**Count III**

Failure to timely submit a Toxic Chemical Release Inventory Reporting Form R for methanol for calendar year 2005:

CAS No. 67-56-1..... \$11,856

**Count IV**

Failure to timely submit a Toxic Chemical Release Inventory Reporting Form R for ethylene glycol for calendar year 2004:

CAS No. 107-21-1.....\$6,448

**Count V**

Failure to timely submit a Toxic Chemical Release Inventory Reporting Form R for ethylene glycol for calendar year 2005:

CAS No. 107-21-1..... \$6,448

**Total Proposed Civil Penalty.....\$57,870**

Complainant has determined the proposed civil penalty according to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). In determining the proposed penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and*

*Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)(amended)(April 12, 2001), 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* (the Consolidated Rules), 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with this Complaint is a copy of the Consolidated Rules.

**Filing and Service of Documents**

Respondent must file with the U.S. EPA, Region 5, 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-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
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 Terence Stanuch to receive copies of any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Stanuch at (312) 886-8044. His address is:

Terence Stanuch (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

**Terms of Payment**

Respondent may resolve this proceeding at any time by paying the proposed civil penalty by sending a certified or cashier's 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

Respondent must include the case name, docket number and the billing document 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 Mr. Stanuch at the addresses given above, and to:

Terence Bonace (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

**Answer and Opportunity to Request a Hearing**

If Respondent contests any material fact upon which the Complaint is based 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 civil penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of U.S. 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 Mr. Bonace at (312) 886-3387.

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 both 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 an informal conference. However, Complainant will not reduce the penalty simply because the parties hold an informal settlement conference.

### **Continuing Obligation to Comply**

Respondent's payment of the civil penalty will not satisfy Respondent's legal obligation to file a complete and accurate Form R for each year that Respondent manufactured, processed, or otherwise used a toxic chemical identified in this Complaint in a quantity exceeding the threshold for reporting. Whether Respondent chooses to pay the proposed civil penalty, request a hearing, or settle this case, Respondent is still legally required to submit a complete and accurate Form R for the violation alleged in Count I to both of the following:

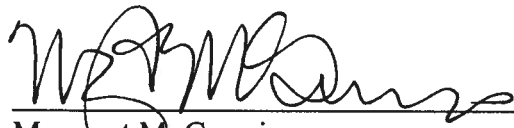
TRI Data Processing Center  
P.O. Box 1513  
Lanham, MD 20703-1513  
Attn: Toxic Chemical Release Inventory

Steve Tomlyanovich  
Department of Public Safety  
Minnesota EPCRA Program  
444 Cedar Street, Suite 223  
St. Paul, Minnesota 55101

Continued failure to file the required Form R may subject Respondent to additional civil penalties of up to \$37,500 per day of violation.

March 11, 2009

Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division


**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Complaint involving Elliot Badzin, SuperClean Brands, Inc., was filed on March 17, 2009, with the Regional Hearing Clerk (E-13J), U. S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7001 0320 0006 0182 9764, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 313 Enforcement Response Policy" to:

Elliot Badzin  
SuperClean Brands, Inc.  
1380 Corporate Center Curve  
Suite 200  
Eagan, Minnesota 55121

with intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Terry Stanuch, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
\_\_\_\_\_  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. EPCRA-05-2009-0016

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PROTECTION AGENCY