



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 26 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Matthew Brian Hitchcock, Owner
MBH Trucking, L.L.C.
672 N M-52
P.O. Box 600
Webberville, MI 48892

Re: In the Matter of MBH Trucking, L.L.C., Webberville, Michigan
Docket Nos: ~~CERCLA-05-2009-0005~~ EPCRA-05-2009-0017 MM-05-2009-0005

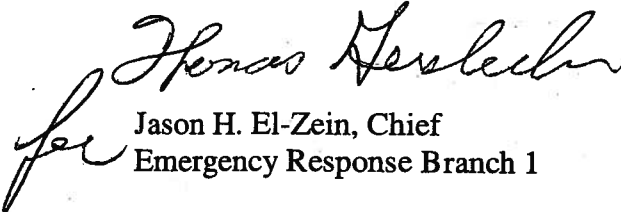
Dear Mr. Hitchcock:

I have enclosed a Complaint filed against MBH Trucking, L.L.C. under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Sections 325(b)(2), (c)(1), and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§11045(b)(2), (c)(1), and (c)(2). The Complaint alleges violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Sections 304(a), (c), 311, and 312 of EPCRA, 42 U.S.C. §§ 11004(a) and (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 Nicole Wood, Assistant 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 Nicole Wood, Assistant Regional Counsel at (312) 886-0664.

Sincerely yours,


Jason H. El-Zein, Chief
Emergency Response Branch 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CERCLA-05-2009-0005 EPCRA-05-2009-0017
)	MM-05-2009-0005
MBH Trucking, L.L.C.)	Proceeding to Assess a Civil Penalty Under
Webberville, Michigan)	Section 109(b) of the Comprehensive
)	Environmental Response, Compensation, and
)	Liability Act, and Sections 325(b)(2), (c)(1) and
Respondent.)	(c)(2) of the Emergency Community Right-to-
<hr/>)	Know Act of 1986

RECEIVED
MAR 26 2009

Complaint

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This is an administrative proceeding to assess a civil penalty under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Sections 325(b)(2), (c)(1), and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), (c)(1), and (c)(2).
2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. The Respondent is MBH Trucking, L.L.C., a limited liability company doing business in the State of Michigan.

Statutory and Regulatory Background

4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.
5. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires the owner or operator of a facility to immediately provide notice, as described in Section 304(b) of EPCRA,

42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

6. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), the owner or operator of a facility must give the notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release, and to the state emergency planning commission (SERC) of any state likely to be affected by a release.

7. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires the owner or operator of the facility to provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b), as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel, and local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

9. 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 SERC, community emergency

coordinator for the 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.

10. 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 I 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 U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

11. 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.

12. Federal regulations at 29 C.F.R. § 1910.1200(b)(1) require all employers to provide information to their employees about the hazardous chemicals to which they are exposed by means of a hazard communication program, including, but not limited to, MSDSs.

13. 29 C.F.R. § 1910.1200(c) defines hazardous chemicals as any chemical which is a physical or a health hazard.

General Allegations

14. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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

16. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 672 N M-52, Webberville, Michigan (fixed facility).

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

18. At all times relevant to this Complaint, Respondent was in charge of the truck and transport tank facility from which the anhydrous ammonia was released on May 6, 2008 (transport tank facility).

19. Respondent’s fixed facility and transport tank facility consists of a building, structure, installation, equipment, storage container, motor vehicle, rolling stock, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

20. Respondent’s fixed facility and transport tank facility are a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. 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, including motor vehicles and rolling stock.

22. Respondent's fixed facility and transport tank facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

23. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. 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).

25. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

27. Diesel fuel (CAS #68476-34-6) is a combustible liquid under OSHA regulations at 29 C.F.R. Part 1910, having a flash point of 125.06 degrees Fahrenheit.

28. Diesel fuel (CAS #68476-34-6) 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).

29. At all times relevant to this Complaint, Respondent produced, used, or stored diesel fuel at the fixed facility.

30. Diesel fuel (CAS #68476-34-6) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

31. As of January 1, 2005, diesel fuel was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

32. During at least one period of time in calendar year 2005, diesel fuel was present at the facility in an amount equal to or greater than the minimum threshold level.

33. During at least one period of time in calendar year 2006, diesel fuel was present at the facility in an amount equal to or greater than the minimum threshold level.

34. During at least one period of time in calendar year 2007, diesel fuel was present at the facility in an amount equal to or greater than the minimum threshold level.

35. OSHA requires Respondent to prepare, or have available, an MSDS for diesel fuel.

36. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 31, 2005, an MSDS for diesel fuel or a list including diesel fuel.

37. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including diesel fuel on or before March 1, 2006, for calendar year 2005.

38. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including diesel fuel on or before March 1, 2007, for calendar year 2006.

39. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including diesel fuel on or before March 1, 2008, for calendar year 2007.

40. On May 6, 2008, at or about 5:30 p.m., a release occurred from Respondent's transport tank facility of approximately 920 pounds of anhydrous ammonia (the release).

41. In a 24 hour time period, the release of anhydrous ammonia exceeded 100 pounds.

42. During the release, approximately 920 pounds of anhydrous ammonia, spilled, leaked, pumped, emitted, discharged, or escaped into the land surface or subsurface strata, or ambient air and/or air or land.

43. The release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

44. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

45. Respondent had knowledge of the release on May 6, 2008, at approximately 5:30 p.m.

46. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

47. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

48. The release was likely to affect Michigan.

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

50. The release was likely to affect Ingham County, Michigan

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

52. At all times relevant to this Complaint, the Leroy Township Fire Department was the fire department with jurisdiction over the facility.

Count 1

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

54. Respondent notified the NRC of the release on May 9, 2008, at 4:00 p.m.

55. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

56. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 2

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

58. Respondent notified the Michigan SERC of the release on May 12, 2008, at 12:24 p.m.

59. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

60. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 3

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

62. Respondent notified the LEPC of the release on May 14, 2008, through the written follow-up notification.

63. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

64. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 4

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

66. Respondent provided written follow-up emergency notice of the release to the SERC on May 14, 2008.

67. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

68. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Count 5

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

70. Respondent provided written follow-up emergency notice of the release to the LEPC on May 14, 2008.

71. Respondent did not provide the LEPC written follow-up emergency notice of the release as soon as practicable after the release occurred.

72. Respondent's failure to provide written follow-up emergency notice of the release to the LEPC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Count 6

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

74. Respondent submitted to the SERC an MSDS for diesel fuel or a list showing diesel fuel on January 9, 2009.

75. Each day Respondent failed to submit to the SERC an MSDS or a list for diesel fuel by March 31, 2005, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 7

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

77. Respondent submitted to the LEPC an MSDS for diesel fuel or a list showing diesel fuel on January 9, 2009.

78. Each day Respondent failed to submit to the LEPC an MSDS or a list for diesel fuel by March 31, 2005, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 8

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

80. Respondent submitted to the Leroy Township Fire Department an MSDS for diesel fuel or a list showing diesel fuel on January 9, 2009.

81. Each day Respondent failed to submit to the Leroy Township Fire Department an MSDS or a list for diesel fuel by March 31, 2005, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 9

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

83. As of January 20, 2009, Respondent had not submitted to the SERC, LEPC, or the Leroy Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel for calendar year 2005.

84. Each day Respondent failed to submit to the SERC, LEPC, and Leroy Township Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel, by March 1, 2006, for calendar year 2005, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 10

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

86. Respondent submitted to the SERC, LEPC, or the Leroy Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel on January 9, 2009, for calendar year 2006.

87. Each day Respondent failed to submit to the SERC, LEPC, and Leroy Township Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including

diesel fuel by March 1, 2007, for calendar year 2006, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 11

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

89. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel, on January 9, 2009, for calendar year 2007.

90. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel, 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 12

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

92. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel on January 9, 2009, for calendar year 2007.

93. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel 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 13

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

95. Respondent submitted to the Leroy Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel on January 9, 2009, for calendar year 2007.

96. Each day Respondent failed to submit to the Leroy Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel 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 CERCLA Penalty

97. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. 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, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day for violations occurring after January 12, 2009.

98. Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), requires U.S. EPA to consider the nature, circumstances, extent and gravity of the violations, a violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and any other matters that justice may require, when assessing an administrative penalty under Section 109(b) of CERCLA.

99. Based upon an evaluation of the facts alleged in this Complaint and the factors in Section 109(a)(3) of CERCLA, Complainant proposes that U.S. EPA assess a civil penalty against Respondent of \$21,168.71 for the CERCLA violation alleged in Count 1 of this Complaint.

100. Complainant calculated the CERCLA penalties by evaluating the facts and circumstances of this case with specific reference to U.S. 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.

Proposed EPCRA Penalty

101. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 304. 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, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day for violations that occurred after January 12, 2009.

102. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. 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 through January 12, 2009, and to \$16,000 per day of violation that occurred after January 12, 2009.

103. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. 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, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day for violations that occurred after January 12, 2009.

104. 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 U.S. EPA assess a civil penalty against Respondent of \$117,523.43 for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various EPCRA counts of this Complaint as follows:

Count 2 EPCRA Section 304(a) (SERC):	\$ 21,579.76
Count 3 EPCRA Section 304(a) (LEPC):	\$ 21,990.80
Count 4 EPCRA Section 304(c) (SERC):	\$ 6,919.51
Count 5 EPCRA Section 304(c) (LEPC):	\$ 6,919.51
Count 6 EPCRA Section 311 (SERC):	\$ 5,480.80
Count 7 EPCRA Section 311 (LEPC):	\$ 5,480.80
Count 8 EPCRA Section 311 (fire dept):	\$ 5,480.80
Count 9 EPCRA Section 312(a) (Year 2005):	\$ 1,275.00
Count 10 EPCRA Section 312(a) (Year 2006):	\$ 1,275.00

Count 11 EPCRA Section 312(a) (SERC):	\$ 13,701.15
Count 12 EPCRA Section 312(a) (LEPC):	\$ 13,701.15
Count 13 EPCRA Section 312(a) (fire dept.):	\$ 13,701.15
TOTAL EPCRA SECTION 325 PENALTY	\$117,523.43
TOTAL CERCLA AND EPCRA PENALTY	\$138,692.14

105. Complainant calculated the EPCRA penalties by evaluating the facts and circumstances of this case with specific reference to U.S. 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 U.S. 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-19J)
U.S. EPA, Region 5
77 West 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 Nicole Wood to

receive any Answer and subsequent legal documents that Respondent serves in this proceeding.

You may telephone Nicole Wood at (312) 886-0664. Her address is:

Nicole Wood (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West 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 CERCLA violation payable to "EPA Hazardous Substance Superfund," to:

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

and 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, 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 Nicole Wood 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 U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

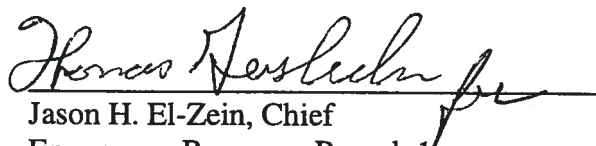
Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact James Entzminger at (312) 886-4062.

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

3-26-09

Date



Jason H. El-Zein, Chief
Emergency Response Branch 1
Superfund Division

In the Matter of:

MBH Trucking, L.L.C., Webberville, Michigan

Docket Nos. CERCLA-05-2009-0005 EPCRA-05-2009-0017 MM-05-2009-0005

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U.S. ENVIRONMENTAL
PROTECTION AGENCY**

In the Matter of:

MBH Trucking, L.L.C., Webberville, Michigan


Docket Nos. CERCLA-05-2009-0005 EPCRA-05-2009-0017 MM-05-2009-0005

Certificate of Service

I, James Entzminger, certify that I filed the original and one copy of the Complaint, 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:

Matthew Brian Hitchcock, Owner
MBH Trucking, L.L.C.
672 N M-52
P.O. Box 600
Webberville, MI 48892

On the 26 day of March, 2009.


James Entzminger
U.S. Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY**