



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 OFFICE OF ADMINISTRATIVE LAW JUDGES
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Date: June 7, 2007

From the office of: Judge Barbara Gunning Chief Judge Susan Biro
 Judge Spencer Nissen Judge William Moran

To: Donna Brooks-Woodward, RHC Fax: 312-886-7697

Of: US EPA, Reg. I Ph:

To: Jeffery Trivino, Esq. Fax: "

Of: ORC, U.S. EPA, Reg. I Ph:

To: Joseph H. Maternowski, Esq. Fax: 412-877-5999

Of: Ross & Barnett Ph:

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Of: Ph:

Re: Super Clean Brands Inc., d/b/a Fox Packaging Co.
 Docket No. EPCRA-05-2007-0013

Urgent For Review For Your Information / Files

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Order

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of

SuperClean Brands, Inc., d/b/a
Fox Packaging Company,

Respondents

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)
) **Docket No. EPCRA-05-2007-0013**
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)
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Order

This proceeding arises under the authority of Sections 325(c)(1) and (2) of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA" or "the Act"), 42 U.S.C. § 11045(c)(1) and (2). The purpose of this Order is to direct parties to exchange prehearing information in accordance with Rule 22.19 of 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). The parties are directed to provide the following information:

By Complainant and Respondent:

1. Desired or required location of the hearing. See Rules 22.19(d) and 22.21(d).
2. A list of prospective witnesses, a brief summary of their anticipated testimony, and a copy of each document or exhibit to be proffered in evidence to the extent not covered by the specific requests below.

By Complainant:

1. State the factual basis for the allegation in paragraph 3 of the complaint that SuperClean Brands, Inc. ("Respondent") is a corporation doing business in the State of Minnesota as "Fox Packaging Company".
2. Provide a copy of MSDS for methanol (CAS# 67-56-1), isopropyl alcohol (CAS 67-63-01), and ethylene glycol (CAS 107-21-1)
3. Provide a copy of any documents supporting the allegation in paragraph 20 of the complaint that at all times relevant to the complaint the Minnesota Division of Homeland Security and Emergency Management was the state emergency response commission ("SERC") for the State of Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

4. Provide a copy of the Emergency and Hazardous Chemical Inventory Form including methanol, isopropyl alcohol, and ethylene glycol for the calendar year 2005 submitted by Respondent to SFRC and the St. Paul Fire Department on May 22, 2006.
5. Provide a copy of the audit report by the EPCRA compliance inspector referred to in paragraph 38 of the answer and respond to the assertion that Respondent had timely filed prior Chemical Inventory Reports.
6. Respond to Respondent's assertions that unique circumstances, unlikely to recur, were the reason for Respondent's failure to timely file the reports in this instance, that the proposed penalty fails to properly consider statutory and penalty policy factors and that the proposed penalty is barred by, inter alia, accord and satisfaction, settlement and waiver, equitable estoppel and laches.
7. Provide a copy of any documents such as D&B reports or copies of income tax returns upon which the reduction in the penalty initially proposed was based.

By Respondent:

1. If not provided in responses to specific items below, summarize any facts supporting denial of the violations alleged in the complaint.
2. Describe the unique circumstances alleged as the reason for Respondent's failure to timely file the Chemical Inventory Reports for the year 2005.
3. Submit a memorandum supporting the arguments that Complainant failed to properly apply the statutory adjustment factors for ability to pay, degree of culpability, other matters as justice may require, size of business, attitude and voluntary disclosure and that Complainant misapplied the Enforcement Response Policy.
4. Explain in detail the contention that doctrines of accord and satisfaction, settlement and waiver, lack of jurisdiction, equitable estoppel and laches bar the Complainant from imposing or enforcing any civil penalties in this instance.
6. If Respondent is contending that the proposed penalty exceeds its ability to pay, provide financial statements, copies of income tax returns or other data to support such contention.

Responses to this Order should be provided to the Regional Hearing Clerk, the other party, and to the undersigned on or before July 6, 2007.

Dated this 7th day of June, 2007.



Spencer T. Nisson
Administrative Law Judge

* In accordance with Rule 22.5(c)(4), the parties are directed to promptly notify the Regional Hearing Clerk, all other parties, and the ALJ of any change in address and/or telephone number.

** The parties are informed that the use of E-Mail to communicate with this office is considered inappropriate.

In the matter of *SuperClean Brands, Inc., d/b/a Fox Packaging Company*, Respondent.
Docket No. EPCRA-05-2007-0013

CERTIFICATE OF SERVICE

I certify that the foregoing **Order**, dated June 7, 2007, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Sonja Brooks-Woodard
Regional Hearing Clerk
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77 West Jackson Blvd., 13th Floor
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Fx: 312.886.9697

One Copy by Facsimile and Certified Mail to:

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Dated: June 7, 2007
Washington, D.C.