



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

NOV 25 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED # 7010 2780 0001 3624 9457

Mark Ludwig
Ludwig, Inc.
P.O. Box 450
Waldo, AR 71770

Subject: Complaint and Notice of Opportunity for Hearing
Docket No. EPCRA-06-2015-0502

Dear Mr. Ludwig:

Enclosed is a Complaint and Notice of Opportunity for Hearing (Complaint) issued to Ludwig, Inc., Waldo, Arkansas, pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045. By filing this Complaint, EPA is seeking an administrative order assessing a civil administrative penalty of \$25,400. Also enclosed for your reference are the Consolidated Rules of Practice governing this administrative action (40 C.F.R. Part 22).

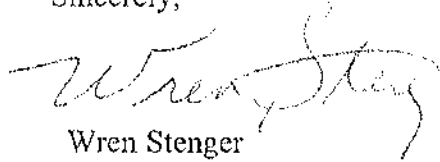
Please notice the section of the Complaint entitled "Opportunity to Request a Hearing." A written request for a hearing must be filed with the Regional Hearing Clerk within thirty (30) days of the service of this Complaint. If you fail to file an answer, a default judgment may be entered, and the penalty assessed will become due and payable thirty (30) days after such judgment becomes final.

Whether or not you request a hearing, we encourage you to confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it takes action to pursue the possibility of settlement through an informal conference. Any settlement would be formalized by the issuance of a Consent Agreement and Final Order signed on behalf of all parties, which also would constitute a waiver of the right to a hearing or appeal of any issued raised in the Complaint. A request for an informal conference does not extend the time by which you must request a hearing on the proposed penalty assessment; the two procedures can be pursued simultaneously.

If you have any additional questions regarding this matter, or would like to request an informal conference concerning it, please contact Mr. Brian Tomasovic, Assistant Regional Counsel, at the following address or phone number.

Brian Tomasovic
Office of Regional Counsel (6RC-ER)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202
Direct Line: (214) 665-9725
Tomasovic.Brian@epa.gov

Sincerely,

A handwritten signature in cursive script that reads "Wren Stenger". The signature is written in dark ink and is positioned above the printed name and title.

Wren Stenger
Director
Multimedia Planning and Permitting
Division

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2014 NOV 26 AM 9:57
REGIONAL OFFICE
EPA REGION VI

IN THE MATTER OF:

LUDWIG, INC.
WALDO, ARKANSAS

RESPONDENT

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DOCKET NO. EPCRA-06-2015-0502

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

This Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), and 40 C.F.R. § 22.13. The Complainant in this action is the Director of the Multimedia Planning and Permitting Division, United States Environmental Protection Agency (EPA), Region 6, who has delegated authority to issue such Complaints in the states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. The Complainant will show that Ludwig, Inc. (Respondent) has violated Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder.

I. STATUTORY AND REGULATORY BACKGROUND

1. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that: (a) has ten or more full-time employees; (b) that is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry

Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c), and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the calendar year, to complete and submit a toxic chemical release reporting form (EPA Form R) to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year.

2. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. 40 C.F.R. § 372.28 sets forth lower threshold amounts for toxic chemicals of special concern (certain persistent bioaccumulative toxic chemicals). A certification statement (Form A) may be submitted in lieu of a Form R if all criteria under 40 C.F.R. § 372.27 are met, including that total annual waste management of a listed chemical does not exceed 500 pounds.

3. “Manufacture” as defined by 40 C.F.R. § 372.3, means to produce, prepare, import or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use, or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or

mixture of chemicals as a byproduct, and a toxic chemical that remains in that chemical or mixture of chemicals as an impurity.

4. "Process" as defined by 40 C.F.R. § 372.3, means the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing the substance, or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.

5. "Otherwise use" as defined by 40 C.F.R. § 372.3, means "any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms 'manufacture' or 'process.'"

6. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator to assess a penalty up to \$37,500 for each violation of "any requirement" of Section 313 of EPCRA, 42 U.S.C. § 11023.¹ The EPA regulations codified at 40 C.F.R. Part 372 were promulgated to carry out the requirements of Section 313.

II. PRELIMINARY ALLEGATIONS

7. The Respondent is a corporation incorporated under the laws of the State of Arkansas and authorized to do business in the State of Arkansas.

8. The Respondent is a "person" as defined by Section 329(7) of EPCRA,

¹ The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 per day of violation for violations occurring between January 30, 1997 and March 15, 2004; to \$32,500 per day of violation for violations that occurred between March 15, 2004 and January 12, 2009, and to \$37,500 for violations that occurred after January 12, 2009.

42 U.S.C. § 11049(7).

9. The Respondent owns and operates a manufacturing facility located at 502 West Main Street, Waldo, AR 71770.

10. The facility identified in Paragraph 9, is a “facility,” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

11. The Respondent's facility had ten (10) or more “full-time employees” as that term is defined by 40 C.F.R. § 372.3 for calendar years 2009 through 2013.

12. The Respondent's facility is Standard Industrial Classification (SIC) code 3086 [plastic foam products] or North American Industrial Classification System (NAICS) subsector or industry code 326140 [polystyrene foam product manufacturing], and 40 C.F.R. Part 372 applies to a facility with these codes.

13. Diisocyanates are “toxic chemicals” within the meaning of 40 C.F.R. § 372.3 and are a listed chemical category for which reporting is required, as specified at 40 C.F.R. § 372.65(c).

14. During calendar years 2009 through 2013, Respondent's facility “manufactured, processed, or otherwise used” diisocyanates.

15. On July 31, 2014, a representative from EPA, Region 6, sent an investigatory email to Respondent regarding certain abnormalities in the reporting of diisocyanates for the facility.

III. VIOLATIONS

Count 1 – Failure to Timely Report Diisocyanates for Calendar Year 2009

16. Paragraphs 1 through 15 are realleged and incorporated by reference.

17. During calendar year 2009, the Respondent “manufactured, processed, or otherwise used” diisocyanates at the Respondent’s facility in excess of the applicable threshold.

18. The Respondent failed to submit an EPA Form R to EPA and the State of Arkansas for diisocyanates as required by July 1, 2010.

19. The Respondent later submitted an EPA Form R for 2009 on June 20, 2014.

20. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.30 by failing to timely submit a completed EPA Form R for diisocyanates for calendar year 2009 to EPA and to the State of Arkansas by July 1, 2010.

Count 2 – Failure to Timely Report Diisocyanates for Calendar Year 2010

21. Paragraphs 1 through 15 are realleged and incorporated by reference.

22. During calendar year 2010, the Respondent “manufactured, processed, or otherwise used” diisocyanates at the Respondent’s facility excess of the applicable threshold.

23. The Respondent failed to submit an EPA Form R to EPA and the State of Arkansas for diisocyanates as required by July 1, 2011.

24. The Respondent later submitted an EPA Form R for 2010 on August 29, 2012.

25. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a completed EPA Form R for diisocyanates for calendar year 2010 to EPA and to the State of Arkansas by July 1, 2011.

Count 3 – Failure to Timely Report Diisocyanates for Calendar Year 2011

26. Paragraphs 1 through 15 are realleged and incorporated by reference.

27. During calendar year 2011, the Respondent “manufactured, processed, or otherwise used” diisocyanates at the Respondent’s facility in excess of the applicable threshold.

28. The Respondent failed to file an EPA Form R with EPA and the State of Arkansas for diisocyanates as required by July 1, 2012.

29. The Respondent later submitted an EPA Form R for 2011 on August 29, 2012.

30. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a completed EPA Form R for diisocyanates for calendar year 2011 to EPA and to the State of Arkansas by July 1, 2012.

Count 4 – Failure to Submit a Complete and Accurate Report for Diisocyanates Releases for Calendar Year 2013

31. Paragraphs 1 through 15 are realleged and incorporated by reference.

32. During calendar year 2013, the Respondent “manufactured, processed, or otherwise used” diisocyanates at the Respondent’s facility in excess of the applicable threshold.

33. The Respondent failed to make a reasonable estimate of the quantity of diisocyanates when submitting the data required by EPA Form R into the TRI online-reporting software provided by EPA, as required.

34. The difference between the reported amount (45,000 pounds) and the corrected amount (450 pounds) indicates that Respondent is responsible for a significant data quality error that compromised the integrity of the data submitted to EPA and states.

35. Respondent was contacted by an EPA enforcement officer on July 31, 2014 who called into question the basis for the initial reported data.

36. Respondent initially indicated the reported amount was correct, but Respondent subsequently revised the reported data on October 16, 2014.

37. Therefore, the Respondent violated 40 C.F.R. § 372.30 by failing to submit complete and accurate data for diisocyanates for calendar year 2013 to EPA and to the State of Arkansas.

Count 5 – Failure Maintain Records for Calendar Year 2011

38. Paragraphs 1 through 15 are realleged and incorporated by reference.

39. During calendar year 2011, the Respondent “manufactured, processed, or otherwise used” diisocyanates at the Respondent’s facility in excess of the applicable threshold.

40. On October 27, 2014, an EPA enforcement officer requested that Respondent provide documentation supporting the report submitted under 40 C.F.R. § 372.30 for calendar year 2011.

41. Respondent did not provide the requested information and instead communicated that it required assistance from off-site consultants.

42. The Respondent failed to maintain records at the facility for diisocyanates supporting information supplied on the facility’s 2011 EPA Form R

43. The Respondent failed to have those records readily available for EPA inspection when 40 C.F.R. § 372.10 required such recordkeeping.

44. Therefore, the Respondent violated 40 C.F.R. § 372.10 by failing to maintain records at the facility for diisocyanates for calendar year 2011.

Count 6 – Failure Maintain Records for Calendar Year 2012

45. Paragraphs 1 through 15 are realleged and incorporated by reference.

46. During calendar year 2012, the Respondent “manufactured, processed, or otherwise used” diisocyanates at the Respondent’s facility in excess of the applicable threshold.

47. On October 27, 2014, an EPA enforcement officer requested that Respondent provide documentation supporting the report submitted under 40 C.F.R. § 372.30 for calendar year 2012.

48. Respondent did not provide the requested information and instead communicated that it required assistance from off-site consultants.

49. The Respondent failed to maintain records at the facility for diisocyanates supporting information supplied on the facility's 2012 EPA Form R.

50. The Respondent failed to have those records readily available for purposes of inspection by EPA when 40 C.F.R. § 372.10 required such recordkeeping.

51. Therefore, the Respondent violated 40 C.F.R. § 372.10 by failing to maintain records at the facility for diisocyanates for calendar year 2012.

Count 7 – Failure Maintain Records for Calendar Year 2013

52. Paragraphs 1 through 15 are realleged and incorporated by reference.

53. During calendar year 2013, the Respondent “manufactured, processed, or otherwise used” diisocyanates at the Respondent’s facility in excess of the applicable threshold.

54. On October 27, 2014, an EPA enforcement officer requested that Respondent provide documentation supporting the report submitted under 40 C.F.R. § 372.30 for calendar year 2013.

55. Respondent did not provide the requested information and instead communicated that it required assistance from off-site consultants.

56. The Respondent failed to maintain records at the facility for diisocyanates supporting information supplied on the facility's 2013 EPA Form R.

57. The Respondent failed to have those records readily available for purposes of inspection by EPA when 40 C.F.R. § 372.10 required such recordkeeping.

58. Therefore, the Respondent violated 40 C.F.R. § 372.10 by failing to maintain records at the facility for diisocyanates for calendar year 2013.

IV. PROPOSED CIVIL PENALTY

Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as adjusted by 40 C.F.R. Part 19, authorizes EPA to assess a civil penalty of up to \$37,500 per day for each violation of any requirement of EPCRA Section 313, 42 U.S.C. § 11023. The Complainant proposes to assess a civil penalty in the amount of **TWENTY-FIVE THOUSAND DOLLARS AND FOUR HUNDRED DOLLARS AND NO CENTS (\$25,400)**. 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 "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]," dated April 12, 2001, a copy of which is enclosed with this Complaint. This policy provides for a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. The inflation-adjusted individual penalties for each of the violations alleged are as follows:

Count 1 – Failure to Timely Report Diisocyanates for Calendar Year 2009

Extent Level: C (< 10x Threshold, <\$10MM Gross Sales, <50 employees)

Circumstance Level 1: (greater than a year late in reporting)

Adjustment to Gravity-Based Penalty: None

Proposed Penalty for Count 1: \$7,090

Count 2 – Failure to Timely Report Diisocyanates for Calendar Year 2010

Extent Level: C (< 10x Threshold, <\$10MM Gross Sales, <50 employees)

Circumstance Level 1: (greater than a year late in reporting)

Adjustment to Gravity-Based Penalty: None

Proposed Penalty for Count 2: \$7,090

Count 3 – Failure to Timely Report Diisocyanates for Calendar Year 2011

Extent Level: C (< 10x Threshold, <\$10MM Gross Sales, <50 employees)

Circumstance Level 4: (less than a year late in reporting, 59 days late)

Adjustment to Gravity-Based Penalty: None

Proposed Penalty for Count 3: \$2,321

Count 4 – Failure to Correctly Report Diisocyanates Releases for Calendar Year 2013

Extent Level: C (< 10x Threshold, <\$10MM Gross Sales, <50 employees)

Circumstance Level 2: (significant data quality error in reporting diisocyanates)

Adjustment to Gravity-Based Penalty: None

Proposed Penalty for Count 4: \$4456

Count 5 – Failure Maintain Records for Calendar Year 2011

Extent Level: C (< 10x Threshold, <\$10MM Gross Sales, <50 employees)

Circumstance Level 4: (failure to maintain records at facility)

Adjustment to Gravity-Based Penalty: None

Proposed Penalty for Count 5: \$1,485

Count 6 – Failure Maintain Records for Calendar Year 2012

Extent Level: C (< 10x Threshold, <\$10MM Gross Sales, <50 employees)

Circumstance Level 4: (failure to maintain records at facility)

Adjustment to Gravity-Based Penalty: None

Proposed Penalty for Count 6: \$1,485

Count 7 – Failure Maintain Records for Calendar Year 2013

Extent Level: C (< 10x Threshold, <\$10MM Gross Sales, <50 employees)

Circumstance Level 4: (failure to maintain records at facility)

Adjustment to Gravity-Based Penalty: None

Proposed Penalty for Count 7: \$1,485

Total Penalty - \$25,412 (rounded to \$25,400)

V. OPPORTUNITY TO REQUEST A HEARING

The Respondent has the right to request a hearing. Any request for a hearing must be in writing and must be filed with the following within thirty (30) days of receipt of this Complaint:

Ms. Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA - Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

If the Respondent wishes to contest any material fact set forth in the Complaint, contends that the proposed penalty is inappropriate, or contends that it is entitled to a judgment as a matter of law, the original and one copy of the Answer to this Complaint must be filed with the Regional Hearing Clerk at the above address within thirty (30) days after service of said Complaint pursuant to 40 C.F.R. § 22.15. A copy of the Answer shall also be sent to:

Brian Tomasovic
Office of Regional Counsel

U.S. EPA – Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Morton E. Wakeland, Jr., Ph.D
EPCRA 313 Enforcement Coordinator
Toxics Section (6PD-T)
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

The Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which Respondent has knowledge. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Hearings held on the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice, codified at 40 C.F.R. Part 22. A copy of 40 C.F.R. Part 22 is enclosed with this Complaint.

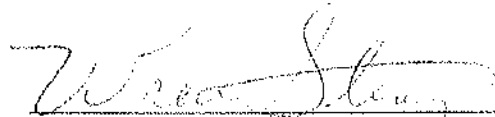
If an Answer to this Complaint is not filed with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under EPCRA. A default order may be thereafter be issued by the Presiding Officer in accordance with 40 C.F.R. § 22.17. The proposed penalty shall become due and payable without further proceedings thirty (30) days after the default order becomes final under 40 C.F.R. § 22.27(c).

VI. SETTLEMENT CONFERENCE

EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Therefore, whether or not a formal hearing is requested, the Respondent may confer informally with the EPA about the alleged violations or the amount of the proposed penalty. The Respondent may wish to have a representative appear at the conference, to be represented by counsel, or both. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. The issuance of such Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and/or Request for a Hearing must be submitted.

To explore the possibility of settlement in this matter, please address all correspondence to Mr. Brian Tomasovic at the address listed above or by telephone call (214) 665-9725.

Dated at Dallas, Texas on this 25th day of November, 2014.



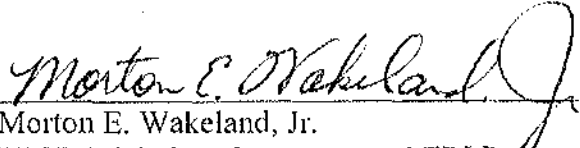
Wren Stenger
Director
Multimedia Planning and Permitting Division

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November, 2014, the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was hand-delivered to the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint together with a copy of EPA's Enforcement Response Policy for Section 313 of the EPCRA and a copy of the Consolidated Rules of Practice (40 C.F.R. Part 22) were placed in the United States Mail, certified mail, return receipt requested:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7010 2780 0001 3624 9457

Mr. Mark Ludwig
Corporate Officer
Ludwig, Inc.
P.O. Box 450
Waldo, AR 71770


Morton E. Wakeland, Jr.
EPCRA § 313 Enforcement and TRI Program
Coordinator
U.S. EPA Region 6
Dallas, TX 75202