UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	) Docket No. CERCLA-07-2003-0005
	) EPCRA-07-2003-0005
Service Reprographics Company	) COMPLAINT AND NOTICE OF
Overland, Missouri	) OPPORTUNITY FOR HEARING
	)
Respondent	)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), as amended, 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act (hereinafter "EPCRA"), 42 U.S.C. § 11045.

2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated Section 103 of CERCLA, 42 U.S.C. § 9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302; and Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355.

Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7.

4. The Respondent is Service Reprographics, Inc., located at 1 Document Drive, Overland, Missouri 63114. Respondent is a wholesaler of full service engineering reprographics, blueprinting service, and color graphics printing service. Respondent is incorporated in the State of Missouri and registered to do business in the State of Missouri.

Statutory and Regulatory Framework

5. Section 103(a) of CERCLA and the regulation set forth at 40 C.F.R. § 302.6, require any person in charge of a vessel or an onshore or offshore facility, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel

or facility in quantities equal to or greater than the reportable quantity established pursuant to Section 102 of CERCLA, to immediately notify the National Response Center of such release.

6. Section 304(a) of EPCRA and the regulation set forth at 40 C.F.R. § 355.40, require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored and at which there is a release of a reportable quantity of any EPCRA extremely hazardous substance or CERCLA hazardous substance to immediately notify the State Emergency Response Commission of any State likely to be affected by the release and the emergency coordinator for any area likely to be affected by the release.

Violations

COUNT I

7. Respondent is a person as defined by Section 101(21) of CERCLA and Section 329(7) of EPCRA.

8. At all times relevant hereto, Respondent owned or operated and was in charge of Service Reprographics, Inc. located at 1055 Cassens Industrial Court, Fenton, Missouri 63026 (hereinafter "Respondent's facility").

9. Respondent's facility is a facility as defined by Section 101(9) of CERCLA and Section 329(4) of EPCRA.

10. Anhydrous ammonia is a hazardous substance as defined by Section 101(14) of CERCLA, with a reportable quantity of 100 pounds, as designated by 40 C.F.R. § 302.4.

11. On February 7, 2002, from approximately 7:00 p.m. to approximately 4:00 a.m. on February 8, 2002, there was a release of anhydrous ammonia from Respondent's facility in excess of the reportable quantity designated by 40 C.F.R. § 302.4.

12. Respondent discovered the release referenced in paragraph 11 at approximately 12:40 a.m. on February 8, 2002.

13. Respondent did not immediately notify the National Response Center of the release as soon as it had knowledge of the release.

14. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603, and of the requirements of 40 C.F.R. § 302.6.

15. Pursuant to Section 109(b) of CERCLA, and based upon the facts set forth in paragraphs 7 through 14 above, it is proposed that a civil penalty of $20,625 be assessed against Respondent.

COUNT II

16. The facts stated in paragraphs 7 through 12 above are herein incorporated.

17. At all times relevant hereto, hazardous chemicals as defined by Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), were produced, used, or stored by Respondent's facility.

18. Anhydrous ammonia is an extremely hazardous substance, as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3) and as designated pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and listed in 40 C.F.R. Part 355, Appendix A.

19. The release referenced in paragraph 11 above was one which required notice pursuant to Section 103(a) of CERCLA.

20. Respondent did not immediately notify the State Emergency Response Commission of the release.

21. Respondent's failure to immediately notify the State Emergency Response Commission of the release is a violation of Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and of the requirements of 40 C.F.R. § 355.40(b).

22. Pursuant to Section 325(b)(2) of EPCRA, and based upon the facts set forth in paragraphs 16 through 20 above, it is hereby proposed that a civil penalty of $20,625 be assessed against Respondent.

Relief

23. Section 109(b)(1) of CERCLA authorizes a civil penalty of not more than $25,000 per day for each day during which a violation continues for any violation of the requirements of Section 103(a) of CERCLA. Under the Debt Collection Improvement Act of 1996 as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, penalties of up to $27,500 per day for each day a violation continues may be assessed for violations of CERCLA Section 103 that occur after January 30, 1997. The penalty proposed in paragraph 15 above is based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above-cited violation, and with respect to the Respondent, ability to pay, any prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require in accordance with CERCLA and the

Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA and Section 103 of CERCLA. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

24. Section 325(b)(2) of EPCRA authorizes a civil penalty for violations of the requirements of Section 304 of EPCRA of not more than $25,000 per day for each day during which the violation continues. Under the Debt Collection Improvement Act of 1996 as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, penalties of up to $27,500 per day for each day a violation continues may be assessed for violations of EPCRA Section 304 that occur after January 30, 1997. The penalty proposed in paragraph 21 above is based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above-cited violation, and with respect to the Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, and such other matters as justice may require in accordance with EPCRA and the Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA and Section 103 of CERCLA. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

25. The proposed penalties as set forth in this Complaint are based on the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the Respondent establishes bonafide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

26. A Summary of the Proposed Penalties is contained in the enclosed Penalty Calculation Summary attached hereto and incorporated herein by reference.

27. Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk.

- Payment of the penalty for Count I - $20,625 - may be made by certified or cashier's check payable to "EPA Hazardous Substance Superfund" and remitted to:

EPA - Region 7
ATTN: Superfund Accounting
c\o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

- Payment of the penalty for Count II - $20,625 - may be made by certified or cashier's check payable to "Treasurer, United States of America" and remitted to:

EPA - Region 7
ATTN: Regional Hearing Clerk
c\o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

Checks should reference the name and docket number of the Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

28. If Respondent pays the proposed penalty within thirty (30) days after receiving the Complaint, then no Answer need be filed.

29. Any Respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an Answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving the Complaint stating that Respondent agrees to pay the proposed penalty in accordance with Rule 22.18(a)(1) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; codified at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules"). The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject the Respondent to default.

30. Respondent may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules, a copy of which is enclosed herewith.

31. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent intends to place at issue; and (c) whether a hearing is requested.

32. Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations. The answer shall be filed with the following:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101

33. If within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, Respondent fails to: (1) submit full payment of the penalty; or (2) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty; or (3) file a written answer and request for a hearing, Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered unless the penalty is clearly inconsistent with the record of the proceeding or CERCLA and EPCRA.

Informal Settlement Conference

34. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Rupert G. Thomas
Assistant Regional Counsel
United States Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101
Telephone (913) 551-7282

35. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

36. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through an informal settlement conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

37. If Respondent has neither achieved a settlement by informal conference nor filed an answer within the thirty (30) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

Date 10/9/02

for William A. Spratlin
Director
Air, RCRA, and Toxics Division

Rupert G. Thomas
Assistant Regional Counsel
Office of Regional Counsel

Enclosures: Penalty Calculation Summary
Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits
Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA and Section 103 of CERCLA

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Penalty Calculation Summary; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; and a copy of the September 30, 1999, Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA and Section 103 of CERCLA, to the following registered agent for Service Reprographics, Inc.:

John G. Wilmsen
Registered Agent for Service Reprographics, Inc.
8440 Valcour Avenue
St. Louis, MO 63123

10-10-02
Date

Victoria Matthews
Victoria Matthews

PENALTY CALCULATION FOR
Service Reprographics, Inc.
Overland, Missouri

COUNT I

VIOLATION: Failure to immediately notify National Response Center (NRC) of February, 8, 2002, anhydrous ammonia release; in violation of 40 C.F.R. § 302.6.

EXTENT: LEVEL 1 - Description: Failed to notify NRC immediately, more than 2 hours of anhydrous ammonia release.

GRAVITY: LEVEL B - Description: Release was greater than 5 but less than or equal to 10 times the reportable quantity for anhydrous ammonia.

GRAVITY BASED PENALTY: $20,625 + other adjustments: None

PROPOSED PENALTY: $20,625

COUNT II

VIOLATION: Failure to immediately notify the State Emergency Response Commission (SERC) of a February, 8, 2002, anhydrous ammonia release, in violation of 40 C.F.R. § 355.40

EXTENT: LEVEL 1 - Description: Failed to notify SERC immediately; greater than 2 hours after anhydrous ammonia release

GRAVITY: LEVEL A - Description: Release was greater than 5 but less than or equal to 10 times the reportable quantity for anhydrous ammonia.

GRAVITY BASED PENALTY: $20,625 + other adjustments: None

PROPOSED PENALTY: $20,625

TOTAL PROPOSED PENALTY: $41,250