UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue
Dallas, Texas 75202

FILED

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REGIONAL HEARING CLERK
EPA REGION VI

Docket No. SARA 6-98-008

IN THE MATTER OF:	)	
	)	
Angus Chemical Company	)	
P.O. Box 1325	)	
Sterlington, Louisiana 71280	)	
	)	**COMPLAINT AND NOTICE OF OPPORTUNITY**
Respondent	)	**FOR HEARING**

ADMINISTRATIVE COMPLAINT

This Administrative Complaint (Complaint) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609. The Administrator has delegated this authority under CERCLA to the EPA Regional Administrators. The Regional Administrator of EPA Region 6 has delegated this authority under CERCLA to the Director, Superfund Division. The proceeding is subject to EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Director, Superfund Division, EPA Region 6 (Complainant), issues this Administrative Complaint and Notice of the Opportunity to Request a Hearing against **Angus Chemical Company** (Respondent) for violations of CERCLA 103, and alleges the following:

PRELIMINARY STATEMENT

1. CERCLA 102(a), 42 U.S.C. § 9602, requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance, the release of which was required to be reported under CERCLA 103(a).

EPA has published and amended such a list, including the corresponding reportable quantities (RQs) for those substances. This list is codified at 40 C.F.R. Part 302.

2. CERCLA 103(a) requires a person in charge of a facility or vessel, as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the RQ, to immediately notify the National Response Center (NRC).

3. Respondent is doing business in **Sterlington, Ouachita Parish, Louisiana.**

4. Respondent is a "person" as defined under CERCLA 101(21), 42 U.S.C. §9601(21).

5. Respondent is the owner and/or operator of a "facility" as that term is defined at 42 U.S.C. § 9601(9), CERCLA 101(9).

6. Respondent owned and/or operated the facility during the "release" of a hazardous substance as that term is defined at 42 U.S.C. § 9601(22), CERCLA 101(22).

7. Respondent was in charge of the facility during the release of a hazardous substance as described below.

8. **Ammonia** is a "hazardous substance" as defined at CERCLA 101(14), U.S.C. §9601(14). The RQ for **ammonia** is **100** pounds, as set forth in 40 C.F.R. Part 302, Table 302.4.

VIOLATIONS

COUNT 1 - **May 29, 1998** Release

9. The allegations contained in paragraphs 1 through 8 are incorporated herein by reference.

10. On or about **May 29, 1998** at **1440** hours, while Respondent was in charge of the facility, there was a release of **ammonia** from the facility into the environment. This release into the environment was more than the RQ. The release lasted approximately **7 hours.**

11. Respondent had knowledge of the release on **May 29, 1998**, at **1440 hours**.

12. Respondent reported the release to the NRC on **June 19, 1998**, at **1515 hours**.

13. Therefore, Respondent violated the notification requirements of CERCLA 103(a), 42 U.S.C. § 9603(a) by failing to provide notice to the NRC immediately after having knowledge that the release occurred.

PROPOSED PENALTY

Pursuant to CERCLA 109, 42 U.S.C. § 9609, EPA is authorized to assess a civil penalty by Administrative Order not to exceed $27,500.00 per day for each day a violation continues under CERCLA § 103, 42 U.S.C. § 9603. Complainant proposes a civil penalty against Respondent of **Thirteen Thousand, Seven Hundred-Fifty Dollars ($13,750.00)** for violation of CERCLA § 103.

The proposed civil penalty has been determined in accordance with Section 109 of CERCLA, 42 U.S.C. § 9609. For purposes of determining the amount of any penalty to be assessed, U.S. EPA considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to U.S. EPA's "Final Penalty Policy for Sections 302, 303, 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 June 13, 1990). This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

The proposed penalty as stated was developed based on the best information available to the Agency at this time, and 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.

Payment of the penalty must be made by cashier's or certified check made payable to the "EPA Hazardous Substance Superfund" and shall be mailed to:

Regional Hearing Clerk (6RC-HO)
U.S. EPA, Region 6
P.O. Box 360582M
Pittsburgh, PA 15251

Docket No. **SARA 6-98-008** should be clearly typed on the check to ensure proper credit.

Respondent shall send simultaneous notice of the penalty payment, including copies of the cashier's check or certified check, to the following:

Mr. Steve Mason
Preparedness and Planning Team (6SF-RP)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

Respondent's adherence to these procedures will ensure proper credit when payments are received.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Within 20 days of service of this Complaint, Respondent may request a hearing on the Complaint before an EPA Administrative Law Judge to contest any material fact or the penalty amount. To request a hearing, Respondent must file a written Answer within twenty (20) days of receipt of this Complaint. The Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer shall contain: (1) a statement of the facts which constitute the grounds of a defense, (2) a concise statement of the facts which Respondent intends to place at issue in the hearing, and (3) whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. If Respondent fails to file a written Answer within twenty (20) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to Answer within twenty (20) days may result in the filing of a Motion for Default. The Default Order may impose the penalties proposed herein without further proceedings.

Any hearing requested will be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 CFR Part 22 ("Consolidated Rules"). Respondent must send its Answer and any request for a hearing to:

Regional Hearing Clerk (6RC-HO)
Office of Regional Counsel
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to Steve Mason, the Officer assigned to represent EPA in this matter, at:

Mr. Steve Mason
Preparedness and Prevention Team (6SF-RP)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202
(214) 665-2292

If Respondent fails to request a hearing within the designated time period or fails to appear at a hearing, EPA may issue a Final Order assessing the proposed administrative penalty. In accordance with CERCLA 109(a)(4), 42 U.S.C. § 9609(a)(4), Respondent may obtain review of any Final Order concerning counts alleged under CERCLA by filing a notice of appeal in the appropriate District Court of the United States within 30 days from the date of such Final Order and by simultaneously sending a copy of such notice by certified mail to the EPA Administrator.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please write to or telephone:

Mr. Steve Mason
Preparedness and Prevention Team (6SF-RP)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202
(214) 665-2292

Please note that a request for the scheduling of, or participation in, an informal settlement conference does not extend the twenty (20) day period during which a written Answer and Request for Hearing must be filed as set forth above. The informal settlement conference procedure, however, may be pursued

simultaneously with the adjudicatory hearing procedure. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The Consolidated Rules prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, Judicial Officer, Regional Administrator, Regional Judicial Officer, or the Administrative Law Judge after issuance of a Complaint. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, Judicial Officer, Administrative Law Judge, Regional Administrator, nor the Regional Judicial Officer, shall have any ex parte communication with the EPA trial staff or the Respondent on the merits of any issues involved in this proceeding.

Date: 9-25-98

Director
Superfund Division