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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELAWARE VALLEY TOXICS COALITION	:	CIVIL ACTION
125 South Ninth Street	:	
Philadelphia, PA 19107	:	
	:	
and	:	
	:	
PHILADELPHIA AREA PROJECT ON	:	
OCCUPATIONAL SAFETY AND HEALTH	:	
3001 Walnut Street	:	
Philadelphia, PA 19104	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
KURZ-HASTINGS, INC.	:	
Dutton and Darnell Roads	:	
Philadelphia, PA 19154	:	
	:	
Defendants.	:	NO. 92- <i>CV-5961</i>

COMPLAINT

I. Introduction

1. This is a citizen lawsuit pursuant to the provisions of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. §§11001, 11046.

2. EPCRA requires owners and operators of facilities with 10 or more full time employees and with Standard Industrial Classification ("S.I.C.") Codes 20 through 39 to complete and submit a Toxic Chemical Release information form for each Section 313 toxic chemical used in quantities exceeding 10,000 pounds during the report calendar year. 42 U.S.C. § 11023.

II. Jurisdiction

3. The district court has subject matter jurisdiction pursuant to 42 U.S.C. §11046(a)(1)(A) and 28 U.S.C. §1331.

4. Venue for this action is in the Eastern District of Pennsylvania pursuant to 42 U.S.C. §11046(b)(1) and 28 U.S.C. §1391.

III. Conditions Precedent

5. Plaintiffs have fulfilled the conditions precedent requirement of 42 U.S.C. §11046(d) by transmitting on June 25, 1992 a 60-day Notice of Intent to commence a citizen lawsuit to the following persons:

- (a) Kurz-Hastings, Inc. (Defendant)
- (b) William K. Reilly (EPA Administrator)
- (c) Edwin B. Erickson (EPA Region III Administrator)
- (d) Thomas B. Foley (Secretary, Pennsylvania Labor and Industry)
- (e) Robert P. Casey (Governor of Pennsylvania)
- (f) Ernest Preate (Pennsylvania Attorney General)
- (g) William P. Barr (U.S. Attorney General).

(See Exhibit A).

6. More than 60 days have elapsed since plaintiffs transmitted the 60-day notices. 42 U.S.C. §11046(d).

7. Plaintiffs allege that the Administrator of the Environmental Protection Agency (E.P.A.) has not commenced nor is the Administrator diligently pursuing an administrative order or

civil action to enforce the requirement of 42 U.S.C. §11023 with respect to the defendant. 42 U.S.C. §11046(e).

IV. Parties

8. (a) The defendant Kurz-Hastings, Inc. ("K-H") manufacturing facility is located at Dutton and Darnell Roads, Philadelphia, Pennsylvania 19154.

(b) K-H manufactures hot stamping foils. The Standard Industrial Classification ("S.I.C.") Code is 3497 (Metal Foil and Leaf).

(c) K-H employs approximately 175 persons.

(d) K-H has sales in the \$25-\$50 million dollar range.

9. (a) Plaintiff, Delaware Valley Toxics Coalition ("DVTC"), is a non-profit tax-exempt (§501(c)(3)) organization.

(b) DVTC has offices at 125 South 9th Street, Philadelphia, Pennsylvania.

(c) The President of DVTC is Miriam Moss; the Executive Director is Greg Schirm.

10. (a) DVTC was founded on or about 1979-80 when trade unionists, environmentalists and community organizations united their efforts to establish a community/worker Right-To-Know ordinance in the City of Philadelphia.

(b) The enactment of the Philadelphia Right-To-Know ordinance in January 1981 was the first such law in the United States.

(c) The Philadelphia Right-To-Know law established a precedent that subsequently was followed by numerous cities and by several states across the United States.

(d) The Philadelphia Right-To-Know precedent eventually led to national laws and regulations. In 1983 the Occupational Safety and Health Administration (OSHA) promulgated the Hazard Communication Regulation 29 C.F.R. §1910.1200 which granted workers the right to be informed about the hazardous chemicals in their workplace; and in 1986 Congress enacted the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. §11001 et seq. which granted all citizens the right to be informed about the releases of hazardous chemicals from stationary facilities to the air, water and soil environments, and which provided information to emergency planning agencies about the site storage of hazardous substances.

11. DVTC provides assistance to individuals and organizations in the greater Philadelphia area who are faced with environmental pollution problems or who are threatened by proposed facilities which may create environmental pollution problems.

12. (a) DVTC annually prepares and publishes Toxic Chemical Release data for the greater Philadelphia area including Bucks County, Delaware County, Chester County, Montgomery County and Philadelphia county.

(b) DVTC's toxic chemical release reports have received wide use. Local area newspapers have published toxic chemical release data for their particular area based on the DVTC reports. DVTC provides Toxic chemical release reports to all manner of

organizations and individuals who wish to learn about the quality of their local environment.

13. (a) The Philadelphia Area Project on Occupational Safety and Health ("PHILAPOSH") is a non-profit tax-exempt (§501(c)(3)) corporation incorporated under the laws of Pennsylvania.

(b) PHILAPOSH maintains offices at 3001 Walnut Street, Philadelphia, Pennsylvania 19104.

(c) The Chairperson of PHILAPOSH is Judy Hoover, a union member of AFSCME District 47. The Director of PHILAPOSH is James Moran.

(d) Approximately 200 local trade unions in the Philadelphia area belong to PHILAPOSH. These unions have a combined membership of approximately 300,000 workers.

14. (a) PHILAPOSH was founded in 1975 to provide assistance to workers and unions in preventing on-the-job injuries and in preventing on-the-job excessive exposure to hazardous chemicals.

(b) PHILAPOSH was the initiator of the workers' Right-To-Know concept. On or about 1977 PHILAPOSH requested OSHA to promulgate a Hazardous Communication Regulation.

(c) When OSHA in 1979 denied the PHILAPOSH request, PHILAPOSH helped to develop a coalition of trade union, environment and community groups to demand enactment of a worker and community Right-To-Know ordinance just for the City of Philadelphia. This effort resulted in the enactment of the Philadelphia Right-To-Know ordinance in 1981.

(d) PHILAPOSH was also the leading organization in the successful campaign for the enactment of the New Jersey Worker and Community Right-To-Know Law (1983) and the Pennsylvania Worker and Community Right-To-Know Law (1984).

(e) The enactment of the New Jersey Right-To-Know law in August 1983 was followed in short order by the promulgation of the OSHA Hazardous Communication Regulation, 29 C.F.R. §1910.1200, in November 1983. The OSHA regulation provided workers, the first time, with the right to be informed about the toxic substances in their workplace environment.

V. Factual Allegations

15. Section 313, EPCRA, 42 U.S.C. §11023, requires the owner or operator of a facility subject to the requirements of Section 313 to submit information in respect to the release of toxic chemicals to the EPA Administrator and to the Pennsylvania Department of Labor and Industry.

16. A facility is subject to the requirements of Section 313 if:

(a) The facility has 10 or more full time employees; and

(b) The facility has a Standard Industrial Code Classification Code between 20 through 39, inclusive; and

(c) The facility used at least 10,000 pounds of a toxic chemical on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, title "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community

Right to Act of 1986" and to the regulations promulgated thereunder in the applicable calendar year.

17. On knowledge and belief the defendant has had 10 or more full time employees in the years 1987 through 1992 inclusive.

18. On knowledge and belief the S.I.C. code for defendant's facility is between S.I.C. 20 and S.I.C. 39, inclusive.

19. On knowledge and belief the defendant's facility in each of the calendar years 1987 through 1991 inclusive, used at least 10,000 pounds of each of the following toxic chemicals which are subject to Section 313 toxic chemical reporting requirements:

(a) Toluene; (b) Xylene, (c) Methyl Ethyl Ketone (MEK), (d) Methyl Isobutyl Ketone (MIBK), (e) Wash Solvent.

VI. Section 313 Violations

20. On knowledge and belief the defendant had a legal obligation, pursuant to Section 313, to file toxic chemical release information reports with the EPA Administrator and with the Pennsylvania Department of Labor and Industry for the report calendar years of 1987 through 1990, inclusive, for each of the following toxic chemicals:

(a) Toluene; (b) Xylene, (c) Methyl Ethyl Ketone, (d) Methyl Isobutyl Ketone, (e) Wash Solvent.

21. (a) Defendant, pursuant to Section 313, was obligated to submit its toxic chemical release information for calendar year 1987 no later than July 1, 1988.

(b) Defendant violated its obligation pursuant to Section 313 by failing to submit its toxic chemical release information for calendar year 1987 no later than July 1, 1988.

(c) On June 25, 1992 plaintiffs transmitted a 60 day notice-to-sue letter to the defendant alleging defendant had failed to submit the toxic chemical release information for calendar year 1987.

(d) On July 20, 1992, some four (4) years late, the defendant submitted the toxic chemical release information for calendar year 1987.

22. (a) Defendant, pursuant to Section 313, was required to submit its toxic chemical release information for calendar year 1988 no later than July 1, 1989.

(b) On June 30, 1989 defendant submitted its toxic chemical release information for calendar year 1988.

(c) On June 25, 1992 plaintiffs transmitted a 60 day notice-to-sue letter to the defendant alleging defendant had failed to submit toxic chemical release information for calendar year 1988.

(d) On July 20, 1992, some three (3) years late, the defendant submitted revised toxic chemical release information for calendar year 1988. The revised toxic chemical release information was at considerable variance with the information that defendant had submitted in 1989. A comparison of the information provided by these two reports is as follows:

<u>Toxic Substance</u>	<u>Pounds Toxic Chemicals Released in 1988</u>	
	<u>1989 Report</u>	<u>1992 Report</u>
Methyl Isobutyl Ketone (MIBK)	178,328	302,400
Toluene	178,328	610,300
Acetone	178,328	--
Methanol	178,328	--
Wash Solvent	178,328	64,000
Methyl Ethyl Ketone (MEK)	--	293,100
Xylene	--	38,000

23. (a) Defendant, pursuant to Section 313, was obligated to submit its toxic chemical release information for calendar year 1989 no later than July 1, 1990.

(b) Defendant violated its obligation pursuant to Section 313 by failing to submit its toxic chemical release information for calendar year 1989 no later than July 1, 1990.

(c) On June 25, 1992 plaintiffs transmitted a 60 day notice-to-sue letter to the defendant alleging defendant had failed to submit the toxic chemical release information for calendar year 1989.

(d) On July 20, 1992, some two (2) years late, the defendant submitted the toxic chemical release information for calendar year 1989.

24. (a) Defendant, pursuant to Section 313, was required to submit its toxic chemical release information for calendar year 1990 no later than July 1, 1991.

(b) Defendant violated its obligation pursuant to Section 313 by failing to submit its toxic chemical release information for calendar year 1990 no later than July 1, 1991.

(c) On June 25, 1992 plaintiffs transmitted a 60 day notice-to-sue letter to the defendant alleging defendant had failed to submit the toxic chemical release information for calendar year 1990 no later than July 1, 1991.

(d) On July 20, 1992, more than one (1) year late, the defendant submitted the toxic chemical release information for calendar year 1990.

VII. RELIEF

WHEREFORE, plaintiffs request this Court grant the following relief:

25. Declare defendant to have violated its Section 313 obligation to timely submit to the EPA Administrator and to the Pennsylvania Department of Labor and Industry defendant's toxic chemical release information in respect to the toxic chemicals:

Toluene
Xylene
Methyl Ethyl Ketone (M.E.K)
Methyl Isobutyl Ketone (M.I.B.K)
Wash Solvent

for calendar years:

1987
1989
1990

26. Declare defendant to have violated its Section 313 obligation to timely submit to the EPA Administrator and the Pennsylvania Department of Labor and Industry toxic chemical release information for calendar year 1988 in respect to

Methyl Ethyl Ketone (M.E.K)
Xylene

27. Declare defendant to have violated its Section 313 obligations with respect to calendar year 1988 when in 1989 the defendant submitted to the EPA Administrator and the Pennsylvania Department of Labor and Industry toxic chemical release information about emissions of acetone and methanol, chemicals which are not even mentioned on defendant's revised toxic chemical release information for calendar year 1988 which defendant submitted in 1992.

28. Declare defendant to have violated its Section 313 obligations in respect to calendar year 1988 when in 1989 the defendant submitted to the EPA Administrator and the Pennsylvania Department of Labor and Industry toxic chemical release information in respect to methyl isobutyl ketone (MIBK) and toluene emissions which were grossly different than the information provided by defendant's revised submission for calendar year 1988 which defendant submitted in 1992.

29. Impose civil penalties upon defendant pursuant to Sections 325 and 326 EPCRA, 42 U.S.C. §§11045(c), 11046(c) in respect to defendant's violations of the requirements of Section 313.

30. Enjoin defendant to comply with all defendant's obligations pursuant to EPCRA and to do so within the time limitations set forth in EPCRA and the regulations promulgated thereunder.

31. Award such other relief as the Court deems just and proper.

32. Award plaintiffs cost of litigation including reasonable attorney and expert witness fees pursuant to Section 326, 42 U.S.C. §11046(f).

Respectfully submitted,



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Date: October 15, 1992