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

DELAWARE VALLEY TOXICS COALITION
125 South Ninth Street
Philadelphia, PA 19107

and

PHILADELPHIA AREA PROJECT ON
OCCUPATIONAL SAFETY AND HEALTH
3001 Walnut Street
Philadelphia, PA 19104

Plaintiffs,

v.

R.J.M. MANUFACTURING, INC.
1126 Bridgewater Road
Bensalem, PA 19020

Defendants.

CIVIL ACTION

NO. 94-CV-2895

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 or operators of facilities with ten 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 covered toxic chemical used in quantities exceeding 10,000 pounds during the report calendar year. Section 313, 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 fulfilled the conditions precedent requirement of 42 U.S.C. §11046(d) by transmitting on November 15, 1993 a 60-day Notice-to-Sue to the following persons:

- (a) R.J.M. Manufacturing, Inc., Defendant
- (b) Carol Browner, EPA Administrator
- (c) Stanley Laskowski, Acting 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) Janet Reno, 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 ("EPA") has not commenced a civil action, nor is the Administrator diligently pursuing, an

ordinance in 1981

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

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administrative order or civil action to enforce the requirements of 42 U.S.C. §11023 with respect to RJM. 42 U.S.C. §11046(e).

IV. Parties

8. (a) The defendant, R.J.M. Manufacturing, Inc. ("RJM") operates a manufacturing facility located at 1626 Bridgewater Road, Bensalem, Pennsylvania 19020.

(b) RJM is engaged in the manufacture of pressure sensitive tapes.

(c) RJM employs more than ten full time employees.

(d) RJM has an S.I.C. classification Code between 20 through 39.

(a) Plaintiff, Delaware Valley Toxics Coalition (D.V.T.C.) organization.

(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 Drake Drobnick, a union member of United Auto Workers Local 1695. 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.

(e) Members of PHILAPOSH work or reside in the area around the RJM facility.

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 for 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 into the environment 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 ten 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 the regulations promulgated thereunder in the applicable calendar year.

17. On knowledge and belief the defendant has had ten or more full time employees in each of the years 1987, 1988, 1989, 1990, 1991, 1992 and 1993.

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 the calendar years 1987, 1988, 1989, 1990, 1991, 1992 and 1993 used at least 10,000 pounds of each of one or more toxic chemicals subject to the toxic chemical reporting requirements of Section 313, EPCRA, 42 U.S.C. §§11023.

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 1987, 1988, 1989, 1990, 1991, 1992 and 1993 with respect to toxic chemicals, including but not limited to the following:

(a) Toluene.

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 November 15, 1993 plaintiffs transmitted a 60-day notice-to-sue letter to the defendant alleging that defendant had failed to submit toxic chemical release information for calendar year 1987.

(d) On January 10, 1994, some five and one-half (5-1/2) years late, the defendant finally submitted its toxic chemical release information, for calendar year 1987.

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

(b) Defendant violated its obligation pursuant to Section 313 by failing to submit its toxic chemical release information for calendar year 1988 no later than July 1, 1989.

(c) On November 15, 1993 plaintiffs transmitted a 60-day notice-to-sue letter to the defendant alleging that defendant had failed to submit toxic chemical release information for calendar year 1988.

(d) On January 10, 1994, some four and one-half (4-1/2) years late, the defendant submitted the toxic chemical release information for report calendar year 1988.

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 November 15, 1993 plaintiffs transmitted a 60-day notice-to-sue letter to the defendant alleging that defendant had failed to submit the toxic chemical release information for calendar year 1989.

(d) On January 10, 1994, some three and one-half (3-1/2) years late, the defendant submitted the toxic chemical release information for calendar year 1989.

VIII. RELIEF

WHEREFORE, plaintiffs request this Court grant the following relief:

24. 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 including but not limited to the following chemicals:

(a) Toluene.

25. 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, 42 U.S.C. §11023.

26. Enjoin defendant to comply with all defendant's obligations pursuant to EPCRA and to do so within the time

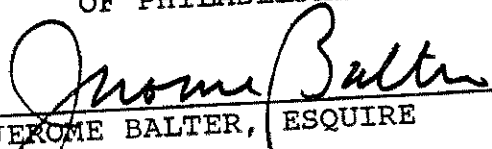
limitations set forth in EPCRA and the regulations promulgated thereunder.

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

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

Respectfully submitted,

PUBLIC INTEREST LAW CENTER
OF PHILADELPHIA



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Attorney for Plaintiffs

May 10, 1994