



# Sierra Club

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*Kansas Chapter*  
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Washington, DC 20044-7611

**RE: U.S. v. Harcros Chemicals, Inc., Civil Action No. 2: 17-cv-2432**  
**FR Doc No: 2017-16369**

To whom it may concern:

It has been 30 years since the passage of the federal Emergency Planning and Community Right-to-Know Act (EPCRA). EPCRA has played a significant role in protecting human health and the environment by providing communities and emergency planners with valuable information on toxic chemical releases in their area.

The intent of EPCRA is to ensure that the public and government agencies have timely access to information regarding chemicals and chemical releases in their communities so that risk can be addressed and protective actions can be formulated in advance. Failure of Harcros Chemicals to implement a Risk Management Program (RMP) as required by applicable RMP Regulations, 40 C.F.R. Part 68, at the Kansas City Facility puts hundreds, if not thousands, of local residents and area workers in danger.

Harcros Chemicals (Harcros) is located in a busy industrial sector of Kansas City, KS, along the Kansas River, adjacent to a major railyard and at the junction of two major highways. The site has a large number of external chemical storage tanks exposed to river flooding. Other Tier II facilities are indicated in the immediate area. There is potential for extensive collateral damage in a chemical emergency, particularly if smoke and toxic air emissions settle in the valley.

By failing to install fire suppression systems and to use standard risk management planning, Harcros has put its workers and local first responders in immediate danger. Within a 1-2 mile radius of the site are other businesses, schools, neighborhoods and highways where the general population is at risk.

As noted in the EPA complaint, fire and explosion suppression are critical to safe operation of the facility under the General Duty Clause. The Harcros Tier II report filed with the regional LEPC is 87 pages long with over 250 chemicals listed, several of which are classified as "extremely hazardous substances" or EHS chemicals. Especially large quantities of ethylene oxide and propylene oxide are stored in tank cars. Large amounts of acid (sulfuric, nitric, muriatic, hydrofluoric, glacial acetic, formic, polyphosphoric), along with other "reactive" hazardous materials and probable carcinogens like epichlorohydrin are stored on site. Many of the chemicals are listed by trade names only.

The Kansas Chapter of the Sierra Club requests that the following comments be taken into consideration regarding the consent decree entered into by Harcros Chemicals, EPA and DOJ.

1. **Was the facility operating under probation when the EPA complaint was filed or when the violations described in the consent decree occurred?** In 2014, Harcros Chemicals Inc. (Harcros) entered into a formal agreement with the U.S. Department of Justice and the U.S. Attorney's Office in Kansas City, Kansas, for a felony violation of the Resource Conservation and Recovery Act (RCRA). As a result of the agreement, the company paid a \$1.5 million fine and faced a probationary period.
2. **How long was Harcros in violation of federal law?** It is not clear from the EPA complaint how long the violations occurred: *Failure to Comply with the Requirements of the General Duty Clause of Section 112(r)(1) of the CAA at the Kansas City Facility...Beginning on or before August 22, 2016 and Upon information and belief, one or more of these violations commenced prior to August 22, 2016 and continued after August 22, 2016.* No specifics are provided on the duration of the violations.
3. **Does the fine agreed upon in the consent decree reflect the seriousness of the complaints and/or the duration and number of violations?** Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 40 C.F.R. § 19.4, Defendant is liable for injunctive relief and assessment of civil penalties of up to \$37,500 per day, per violation, for each violation of Section 112(r)(1) of the CAA that occurred after January 12, 2009, and \$93,750 per day, per violation, for each violation that occurred after November 2, 2015. Fines are assessed by the number of days and number of violations; the public is not in a position to comment on the actual fine assessed in the consent decree since the length of the violations is unknown. That said, the proposed fine appears very low.
4. **Have the Environmental Justice aspects of this case been adequately considered?** The facility is sited near low income, minority communities already overburdened with air quality issues related to diesel emissions from highways and railyards. These communities often lack the resources and information to respond appropriately to chemical emergencies. Typical of EJ neighborhoods, there are disproportionate risks to the community from a facility that benefits from being located in an area where citizens are typically unaware of chemical hazards.
5. **The Kansas Sierra Club does not consider the fine to be consistent with the serious nature of the violations.** Given the number of people who live and work in the area and the potential threats to first responders, the Kansas Sierra Club considers it critical that penalties are sufficient to ensure future compliance. Harcros must comply with RMP requirements, including sharing of information with the community. Near neighbors must be informed to respond appropriately, whether planning evacuation routes or preparing to shelter-in-place.
6. **The Kansas Sierra Club requests that any fines assessed be provided to Kansas City, KS, citizens for improving quality of life in the area impacted.** Education on responding to chemical emergencies is clearly needed. Monitoring air quality locally, reducing diesel emissions and implementing programs to protect public health from air pollution would also be of great benefit to this community, where asthma is already a critical health issue for children. El Centro in Wyandotte County would be an appropriate agency to help coordinate this effort. For over 40 years, El Centro, with its network of advocates and partners, has worked to make the community a stronger, more healthy, and better educated place.

The Kanza Group of the Kansas Chapter of the Sierra Group has many members who live in Kansas City, KS, and has a history of working on EJ issues in that community.

Thank you for accepting these comments. I look forward to your responses.

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