

RG

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. :

UNITED STATES BANKNOTE CORPORATION :
11600 Caroline Road :
Philadelphia, PA 19154 :

Defendants. :

NO. 92- CV-6520

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.

3. EPCRA requires owners and operators of facilities required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and

Health Act of 1970 [29 U.S.C. §651 et seq.] to prepare and submit an Emergency and Hazardous Chemical inventory form for each such hazardous chemical present at the facility in amounts above the threshold reporting level at any time during the report calendar year. 42 U.S.C. §11022.

II. Jurisdiction

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

5. 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

6. 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) U.S. Banknote Company (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).

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

8. 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 requirements of 42 U.S.C. §11023 or 42 U.S.C. §11022 with respect to the defendant. 42 U.S.C. §11046(e).

IV. Parties

9. (a) The defendant, United States Banknote Corporation ("Banknote") facility is located at 11600 Caroline Road, Philadelphia, Pennsylvania 19154.

(b) Banknote is engaged in commercial printing. The Standard Industrial Classification ("S.I.C.") Code is 2751 (Commercial Printing, Letterpress, and Screen).

(c) Banknote employs approximately 250 persons.

(d) Banknote has sales in the \$10-\$25 million dollar per year range.

10. (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.

11. (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.

12. 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.

13. (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.

14. (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.

15. (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

16. 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.

17. 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 the regulations promulgated thereunder in the applicable calendar year.

18. On knowledge and belief the defendant has had 10 or more full time employees in each of the years 1987, 1988, 1989, 1990, 1991 and 1992.

19. 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.

20. On knowledge and belief the defendant's facility in the calendar years 1987, 1988, 1989, 1990 and 1991 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.

21. Section 312, EPCRA, 42 U.S.C. §11022, requires the owner or operator of a facility subject to the requirements of Section 312 to submit information in respect to its inventory of hazardous chemicals to the Pennsylvania Department of Labor and Industry, to the Philadelphia Local Emergency Planning Committee, and to the Philadelphia Fire Department.

22. A facility is subject to the requirements of Section 312 if:

(a) The facility is required to prepare or have available an MSDS for a hazardous chemical under the Occupational Safety and Health Act; and

(b) The facility has at least 10,000 pounds of a hazardous chemical, for which an MSDS is required, on site at any one time during the report calendar year; or

(c) The facility has at least 500 pounds of an extremely hazardous substance, listed in the Appendices to 40 C.F.R. Part 355, on site at any one time during the report calendar year.

23. On knowledge and belief the defendant's facility in the calendar years 1987, 1988, 1989, 1990 and 1991 had at least:

(a) 10,000 pounds of each of one or more hazardous chemicals which are subject to Section 312 emergency and hazardous chemical inventory reporting requirements; and

(b) 500 pounds of each of one or more extremely hazardous chemicals which are subject to Section 312 emergency and hazardous chemical inventory reporting requirements.

VI. Section 313 Violations

24. 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, 1988, 1989 and 1990, with respect to toxic chemicals, including but not limited to the following:

(a) Hydrochloric Acid,

(b) Nickel Compounds,

- (c) Nitric Acid,
- (d) Sulfuric Acid,
- (e) 1,1,1-Trichloroethane,
- (f) Sodium Hydroxide (except in 1990).

25. (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) Even subsequent to June 25, 1992 defendant did not submit the toxic chemical release information for calendar year 1987.

26. (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 June 25, 1992 plaintiffs transmitted a 60 day notice-to-sue letter to defendant alleging defendant had failed to

submit the toxic chemical release information for calendar year 1988.

(d) On August 20, 1992, some three (3) years late, the defendant submitted the toxic chemical release information for calendar year 1988.

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

28. (a) Defendant, pursuant to Section 313, was obligated 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.

(d) Even subsequent to June 25, 1992, defendant did not submit the toxic chemical release information for calendar year 1990.

VII. Section 312 Violations

29. On knowledge and belief the defendant had a legal obligation, pursuant to Section 312, to file emergency and hazardous chemical inventory information reports for the report calendar years 1987 through 1991 inclusive, with the following organizations:

- (a) Pennsylvania Department of Labor and Industry;
- (b) Philadelphia Local Emergency Planning Committee; and
- (c) Philadelphia Fire Department.

30. (a) Defendant, pursuant to Section 312, was obligated to submit its emergency and hazardous chemical inventory information for calendar year 1990 no later than March 1, 1991.

(b) Defendant violated its obligation pursuant to Section 312 by failing to submit its emergency and hazardous chemical inventory information for calendar year 1990 no later than March 1, 1991.

(c) On June 25, 1992 plaintiffs transmitted a 60-day notice-to-sue letter to the defendant alleging that defendant had failed to submit hazardous chemical inventory information reports for the report calendar year 1990.

(d) Defendant, subsequent to June 25, 1992, failed to submit hazardous chemical inventory information reports for the report calendar year 1990.

VIII. RELIEF

WHEREFORE, plaintiffs request this Court grant the following relief:

31. 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) Hydrochloric Acid
- (b) Nickel Compounds
- (c) Nitric Acid
- (d) Sulfuric Acid
- (e) 1,1,1-Trichloroethane
- (f) Sodium Hydroxide

for each of the following calendar years:

- 1987
- 1988
- 1989
- 1990 (except Sodium Hydroxide)

32. Declare defendant to have violated its Section 312 obligation to timely submit the emergency and hazardous chemical inventory information for report calendar year 1990 to the following:

- (a) Pennsylvania Department of Labor and Industry

(b) Philadelphia Local Emergency Planning Committee

(c) Philadelphia Fire Department

33. 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 and Section 312.

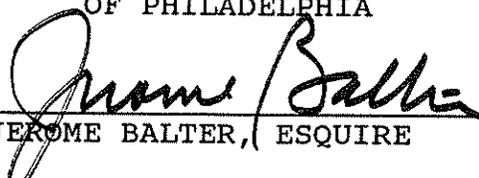
34. Enjoin defendant to comply with all defendant's obligations pursuant to EPCRA and to do so within the time limitations set forth in EPCRA and the regulations promulgated thereunder.

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

36. 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



JEROME BALTER, ESQUIRE

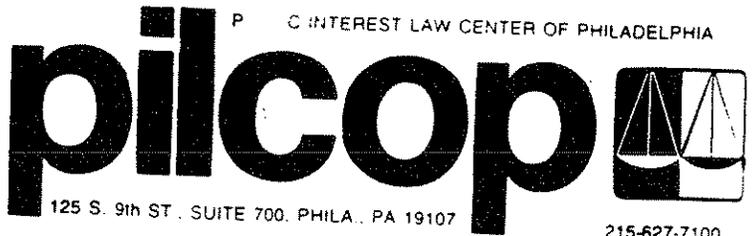
125 South Ninth Street, Suite 700
Philadelphia, PA 19107
(215) 627-7100

Attorney for Plaintiffs

November 12, 1992

MICHAEL CHURCHILL
CHIEF COUNSEL

JEROME BALTER
KAREN L. BLACK
THOMAS K. GILHOOL
JUDITH A. GRAN
FRANK J. LASKI
BARBARA E. RANSOM
LISA MILLETT RAU



WILLIAM H. EWING
CHAIRMAN OF THE BOARD

EDWIN D. WOLF
EXECUTIVE DIRECTOR
1974-1976

June 25, 1992

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Banknote Company
11600 Caroline Road
Philadelphia, PA 19154

William K. Reilly, Administrator
U.S. Environmental Protection Agency
401 "M" Street, S.W.
Washington, D. C. 20460

Edwin B. Erickson, Rgnl. Administrator
U.S. Environmental Protection
Agency - Region III
841 Chestnut Street
Philadelphia, PA 19107

Thomas P. Foley, Secretary
Pennsylvania Department of Labor &
Industry
1700 Labor & Industry Building
Harrisburg, PA 17120

Ladies and Gentlemen:

This letter shall serve as a sixty (60) day Notice, pursuant to Section 326, Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11046, that a citizen lawsuit will be commenced against the U.S. Banknote Company, 11600 Caroline Road, Philadelphia, PA 19154 for the following reasons:

1. For failure to submit emergency and hazardous chemical inventory forms, pursuant to § 11022, to the following:
 - A. The appropriate local emergency planning committee; and
 - B. The State emergency response commission; and

Exhibit A.

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PUBLIC INTEREST LAW CENTER OF PHILADELPHIA

C. The fire department with jurisdiction over your facility.

Investigation of the public records indicate that you have failed to submit the reports which were required to be submitted in calendar year 1991.

2. For failure to submit toxic chemical release forms, pursuant to § 11023, to the following:

- A. The Administrator of the U.S. Environmental Protection Agency; and
- B. The Pennsylvania Department of Labor and Industry.

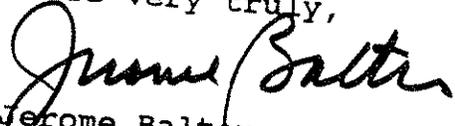
Investigation of the public records indicate that you have failed to submit the reports which were required to be submitted in calendar years 1988, 1989, 1990 and 1991.

x x x x x

This Notice is issued on behalf of the Delaware Valley Toxics Coalition, 125 South 9th Street, Philadelphia, PA 19107; and the Philadelphia Area Project on Occupational Safety and Health (PHILAPOSH), 3001 Walnut Street, Philadelphia, PA 19104.

Should you wish to discuss this matter, please call or write to the undersigned.

Yours very truly,

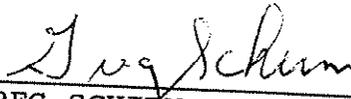

Jerome Balter
PUBLIC INTEREST LAW CENTER
OF PHILADELPHIA

JB/ral

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS

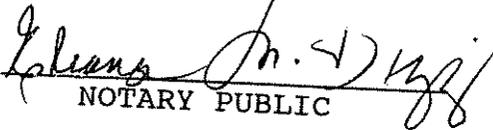
AFFIDAVIT

Greg Schirm, being of age and duly sworn according to law, deposes and says that he is the Executive Director of the plaintiff, Delaware Valley Toxics Coalition, in the foregoing complaint; and he further deposes and states that the facts set forth in the foregoing complaint, Delaware Valley Toxics Coalition v. United States Banknote Corporation, are true and correct to the best of his knowledge, information and belief.



GREG SCHIRM

Sworn to and Subscribed
before me this 12th day
of November, 1992.


NOTARY PUBLIC

My Commission Expires:

NOTARIAL SEAL
ELEANOR M. DEZZI, Notary Public
City of Philadelphia, Phila. County
My Commission Expires May 11, 1996