



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

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Steven C. Schlang  
Enforcement Counsel  
617-918-1773 (phone)  
617-918-1809 (fax)

September 30, 2013

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1  
5 Post Office Square  
Mail Code - ORA18-1  
Boston, Massachusetts 02109-3912

Re: In the Matter of: Metal Finishing Technologies, LLC  
Docket Number: CAA-01-2013-0073

Dear Ms. Santiago,

Please find enclosed for filing an original and one copy of an Administrative Complaint regarding the above-matter.

Please do not hesitate to contact me should you have any questions regarding the enclosed.

Sincerely,

Steven C. Schlang

cc: Jim Gaffey  
Peter Mirabello.

**In the Matter of: Metal Finishing Technologies, LLC  
Docket Number CAA-01-2013-0073**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Complaint has been sent to the following persons on the date noted below:

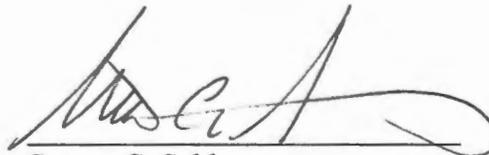
Original and one copy  
hand delivered:

Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. EPA, Region I  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

Copy by Certified Mail-  
Return Receipt Requested

Peter Mirabello  
Metal Finishing Technologies, LLC.  
60 Wooster Court  
Forestville, CT 06010

Date: September 30, 2013



Steven C. Schlang  
Office of Environmental Stewardship U.S.  
Environmental Protection Agency  
Region I  
Five Post Office Square, Suite 100  
Mail Code OES04-4  
Boston, MA 02109-3219  
tel: (617) 918-1773  
fax: (617) 918-0773

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

IN THE MATTER OF  
Metal Finishing Technologies, LLC.  
60 Wooster Court  
Forestville (Bristol), CT

Respondent

Proceeding under Section 113(d) of the Clean  
Air Act, 42 U.S.C. § 7413(d)

Docket Nos. CAA-01-2013-0073

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

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**I. STATEMENT OF AUTHORITY**

1. The United States Environmental Protection Agency Region 1 ("EPA") issues this administrative Complaint and Notice of Opportunity for Hearing ("Complaint") pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d). This action is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The authority to issue this Complaint has been delegated to the Director of the Office of Environmental Stewardship, Region 1 ("Complainant").

2. This Complaint alleges that Metal Finishing Technologies, LLC., ("MFT" or "Respondent") violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations set forth at 40 C.F.R. Part 68.

3. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

## II. STATUTORY AND REGULATORY AUTHORITY

4. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of the accidental release of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released, and Section 112(r)(5), 42 U.S.C § 7412(r)(5), requires EPA to establish for each regulated substance a threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a Risk Management Plan (“RMP”).

5. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated RMP regulations, found at 40 C.F.R. Part 68 (“Part 68”). Section 68.130 of 40 C.F.R. lists the substances regulated under Part 68 (“RMP chemicals” or “regulated substances”) and their associated threshold quantities.

6. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

7. A "process" is defined by 40 C.F.R. § 68.3 as any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

8. A "public receptor" is defined by 40 C.F.R. § 68.3 to include offsite residences, institutions (including schools and hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time where members of the public could be exposed to toxic concentrations, radiant heat, or overexposure, as a result of an accidental release.

9. Each process in which a regulated substance is present in more than a threshold quantity (a "covered process") is subject to one of three risk management programs, for which the eligibility requirements are set forth in 40 C.F.R. § 68.10. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Under 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in certain specified NAICS codes or subject to the Occupational Safety and Health Administration ("OSHA") process safety management ("PSM") standard set forth at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

10. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source implement the chemical accident prevention provisions of Part 68 to which it is subject and submit an RMP. The RMP documents compliance with Part 68. For example, the RMP for a

Program 3 process documents compliance with the elements of a Program 3 Risk Management Program, including 40 C.F.R. § 68.12 (General Requirements); 40 C.F.R. § 68.15 (Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

11. Additionally, 40 C.F.R. § 68.190(b) dictates that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update.

12. Under Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), it is unlawful for any person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

13. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the DCIA, 31 U.S.C. §§ 3701 *et seq.*, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$32,500 per day for violations of the CAA occurring between March 16, 2004 and January 12, 2009, and up to \$37,500 per day for violations of the CAA occurring after January 12, 2009.

14. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), EPA obtained from the Department of Justice a waiver of the twelve-month limitation on EPA's authority to initiate administrative cases.

### **III. GENERAL ALLEGATIONS**

15. Respondent is a corporation organized under the laws of the State of Connecticut with its principal office and metal finishing facility located at 60 Wooster Court, Forestville, Connecticut ("Facility").

16. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

17. The Facility is a building or structure from which an accidental release may occur and is therefore a "stationary source" as that term is defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

18. Respondent is the "owner or operator," as that term is defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

19. Chlorine is an RMP chemical listed under 40 C.F.R. § 68.130. Chlorine is a toxic substance that is normally shipped and stored as a liquefied compressed gas. Chlorine is a heavier-than-air gas, is non-flammable, and is a strong oxidizer. Chlorine causes respiratory distress and may burn skin, eyes, and lungs. Effects of inhalation range from headaches, nausea, and lung irritation to severe eye, nose, and respiratory distress. Inhaling high concentrations of chlorine gas can be lethal. The substance is highly reactive and will readily mix with other substances causing further hazards. In the presence of moisture, chlorine becomes highly corrosive.

20. Pursuant to 40 C.F.R. §§ 68.10(a) and 68.130, any facility storing more than 2,500 pounds of chlorine in a process is subject to the RMP regulations of 40 C.F.R. Part 68.

21. The use, storage, manufacturing, handling or on-site movement of an RMP chemical at the Facility (in any vessel, group of interconnected vessels, or separate vessels that are located such that a regulated substance could be involved in a potential release) is a "process," as defined by 40 C.F.R. § 68.3.

22. On December 6, 2011, two authorized representatives of EPA ("EPA Inspectors") inspected the Facility (the "EPA Inspection"). The purpose of the EPA Inspection was, in part,

to determine the Facility's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.

23. The EPA Inspection included discussions with facility representatives concerning Respondent's chlorine usage and RMP. The EPA inspectors also reviewed documents pertaining to the RMP and toured the facility in the presence of Respondent's representatives.

24. The Respondent's facility holds up to 8,000 pounds of chlorine gas on site, an amount in excess of the regulatory threshold quantity of 2,500 pounds. During the EPA Inspection, Facility personnel told the inspectors that Respondent uses approximately two 1-ton cylinders of chlorine a week. Each cylinder contains 2,000 pounds of chlorine. The cylinders are stored in a room called the Chlorine Tank Room. At the time of EPA's inspection, there were four cylinders in the Chlorine Tank Room.

25. The Facility uses chlorine to assist in its waste treatment process. Specifically, the chlorine is used as part of the facility's cyanide destruction process. Chlorine is piped from one-ton cylinders in Chlorine Tank Room through a chlorinator and then to the Waste Treatment Area, where it is added to cyanide reactor tanks. The one-ton cylinders of chlorine are delivered to the Facility by truck. They are unloaded outside the Chlorine Tank Room using a hydraulic boom, which lifts the containers from the truck and enters the chlorine storage room through an overhead door. The transfer activities, storage, and use of chlorine in the Chlorine Tank Room and Waste Treatment Area is a "process" as defined by 40 C.F.R. § 68.3. Due to the amount of chlorine stored and used by Respondent, the Facility's process is subject to 40 C.F.R. Part 68 and requires an RMP.

26. Respondent's facility is a RMP Program Level 3 facility as that term is defined by 40 C.F.R. § 68.10(d)(2) because the Facility's chlorine process is subject to OSHA's Process

Safety Management standards found at 29 C.F.R. § 1910.119. Also, Respondent's RMP indicates that the end point for a worst-case release of chlorine from one cylinder would reach off-site public receptors, including industrial developments, surrounding residences, schools, recreation areas, and the Pequabuck River.

27. Based on the EPA Inspection and other documents and information provided by Respondent prior to, during, and following the Inspection, EPA has identified the following alleged violations.

#### IV. VIOLATIONS

##### **Count 1: Failure to Correct Submitted RMP and Management System Documentation After Change in Emergency Contact**

28. The allegations in paragraphs 1 through 27 are hereby realleged and incorporated herein by reference.

29. Pursuant to 40 C.F.R. §§ 68.15(b) and (c), the owner or operator of a stationary source with processes subject to an RMP shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the RMP elements. When responsibility for implementing individual requirements of the RMP is assigned to persons other than the person in the aforesaid sentence, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

30. Pursuant to 40 C.F.R. § 68.195(b), the owner or operator of a stationary source for which a RMP was submitted shall correct an RMP to address changes in the emergency contact information required under 40 C.F.R. § 68.160(b)(6).

31. According to the documents reviewed by EPA inspectors during the EPA Inspection, Respondent's RMP listed Claudia Bechard as Respondent's current individual responsible for Respondent's RMP program as well as the facility's emergency contact. During the EPA Inspection, Facility personnel told the EPA inspectors that Ms. Bechard left Respondent's employ first in 2010 and, after a brief return to employment with Respondent, left permanently in June 2011 and was, therefore, no longer the current individual responsible for implementing the facility's RMP or acting as the emergency coordinator. Accordingly, Respondent should have updated the emergency contact information in its RMP and management system documentation in 2011.

32. During the EPA Inspection, the Respondent informed EPA inspectors that Niko Giannopoulos was the current individual responsible for implementing the facility's RMP program as well as the facility's emergency contact. However, Respondent failed to update and correct the RMP by listing Mr. Giannopoulos as the current emergency contact, and his responsibilities regarding the RMP were not documented in the RMP or any ancillary document. The requirement to make such a correction to the RMP was referenced in Respondent's own RMP.

33. The Facility's RMP initially submitted to EPA on June 22, 1999, was last updated and resubmitted on June 9, 2009. As of September 2013, Respondent had not updated its RMP in the EPA Central Data Exchange (CDX) database.

34. By failing to correct and update its RMP and management system documentation to accurately list the current emergency contact person, Respondent violated 40 C.F.R. §§ 68.15(b) and (c); 40 C.F.R. § 68.195(b); and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

**Count 2: Failure to Comply with All Required Process Safety Information Requirements**

35. The allegations in paragraphs 1 through 34 are hereby realleged and incorporated herein by reference.

36. Pursuant to 40 C.F.R. § 68.65(a), the owner or operator of a stationary source for which a RMP was submitted shall complete a compilation of written process safety information before conducting any process hazard analysis required by 40 C.F.R. § 68.67. This compilation of process safety information shall include information pertaining to: (a) the hazards of the regulated substances used or produced by the process; (b) the technology of the process; and (c) the equipment utilized in the process. The specific information required is set out in 40 C.F.R. § 68.65(b), (c), and (d).

37. During the EPA Inspection, the EPA inspectors requested to see Respondent's compilation of written process safety information ("PSI"). Although Respondent maintained an RMP, based on documents submitted, the EPA inspectors observed that the RMP failed to maintain a compilation of written process safety information pertaining to the following items:

Information about the Technology of the Process

- a. process chemistry, as required by 40 C.F.R. § 68.65(c)(1)(ii);
- b. an evaluation of the consequences of deviations, as required by 40 C.F.R. § 68.65(c)(1)(v);

Information about the Equipment

- c. information about the 1- ton cylinder hoist in the Chlorine Tank Room and the 1.5 horsepower pumps used in the process, as required by 40 C.F.R. § 68.65(d);

- d. accurate piping and instrumentation diagrams (“P&ID”), as required by 40 C.F.R. § 68.65(d)(1)(ii) (Facility plans show that the chlorine process utilizes ½ inch pipe, but the actual pipe size is 1 ½ inches);
- e. electrical classification, as required by 40 C.F.R. § 68.65(d)(1)(iii); and
- f. safety systems (e.g., interlocks, detection or suppression systems), as required by 40 C.F.R. § 68.65(d)(1)(viii) (chlorine detectors were not included in the PSI);

38. Also, 40 C.F.R. § 68.65(d) requires documentation that equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”) (40 C.F.R. § 68.65(d)(2)), and a determination, with supporting documentation, that existing equipment, designed and constructed in accordance with codes, standards, or practices that are no longer in general use, is designed, maintained, inspected, tested, and operating in a safe manner (40 C.F.R. § 68.65(d)(3)). A review of relevant RAGAGEP from The Chlorine Institute indicates the following deficiencies in Respondent’s compliance with RAGAGEP:

- a. There were no chlorine sensors/detectors in the loading dock area (near the vent line) or in the Waste Treatment Area, although The Chlorine Institute’s Pamphlet 73, *Atmospheric Monitoring Equipment for Chlorine*, Section 5.4 (June 2003) recommends that sensors be placed close to potential sources of gas.
- b. Chlorine sensors were not calibrated or maintained, although The Chlorine Institute’s Pamphlet 73, at Sections 6 and 7, states that periodic calibrations are very important to overall system performance and that preventative maintenance should be performed to ensure the reliability of the sensors. Likewise, the Chlorine Institute’s Pamphlet 85, *Recommendations for Prevention of Personnel*

*Injuries for Chlorine Production and Use Facilities*, Section 10 (July 2005)

stresses the importance of implementing maintenance procedures for equipment such as monitors and sensors.

- c. Due to the holes in the wall, the Chlorine Tank Room could not be isolated from the rest of the Facility in the event of a release although the Chlorine Institute's Pamphlet 5, *Bulk Storage of Liquid Chlorine*, Section 3 (October 2005), recommends storing tanks in areas that can be isolated in emergencies.
- d. An outside chlorine relief vent was uncovered and open to the elements, including rain, although the Chlorine Institute's Pamphlet 1, *Chlorine Basics*, at Section 2.7.3 (October 2008) stresses the importance of maintaining piping so that it is not exposed to conditions that could cause corrosion. "Precautions should be taken to keep chlorine and chlorine equipment dry. Piping, valves, and containers should be kept capped when not in use to keep out atmospheric moisture such as precipitation or humidity." Likewise Appendix A of Pamphlet 6, *Piping Systems for Dry Chlorine* (May 2005) stresses the need to keep chlorine and chlorine equipment dry.
- e. Some chlorine pipes were not labeled, although the Chlorine Institute's Pamphlet 6 at Section 10 recommends that chlorine lines should be readily identifiable. A common way of identifying piping that contains hazardous materials is set forth in American Society of Mechanical Engineers, Publication A13.1-2007, *Scheme for the Identification of Piping Systems*. Among other things, that publication recommends labeling the piping with information on the content and direction of flow.

39. By failing to complete an accurate compilation of written process safety information before conducting any process hazard analysis required by 40 C.F.R. § 68.67 and by failing to comply with relevant RAGAGEP, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

**Count 3: Failure to Perform a Complete and Accurate Process Hazard Analysis**

40. The allegations in paragraphs 1 through 39 are hereby realleged and incorporated herein by reference.

41. Pursuant to 40 C.F.R. § 68.67, an operator and/or owner of an RMP facility is required to perform an initial process hazard analysis (“PHA”) pertaining to processes covered by 40 C.F.R. Part 68. The PHA shall identify, evaluate, and control the hazards involved in the process.

42. At the time of the EPA Inspection, EPA inspectors requested to see Respondent’s PHA pertaining to processes covered by 40 C.F.R. Part 68. Respondent produced an incomplete and undated PHA (“incomplete PHA”) for Respondent’s Facility. Mr. Giannopoulos, the individual responsible for overseeing and implementing the facility’s RMP program, told EPA inspectors that he did not know if any other PHA had been conducted at the facility.

43. The incomplete PHA referred to in paragraph 42 above failed to address and/or contain the following information despite requirements of 40 C.F.R. § 68.67:

- a. The incomplete PHA fails to address, among other things, the need for chlorine sensors within the Waste Treatment Area or loading dock (associated with chlorine vent line), although these are areas where a chlorine release could occur. Nor does the PHA consider whether the location of the alarm panel is hazardous for facility personnel. Thus the PHA fails to meet the requirements of 40 C.F.R. § 68.67(c) which provides, in part, that a PHA must address, among

other things: (1) the hazards of the process; (2) identification of previous incidents which had a likely potential for catastrophic consequences; (3) engineering and administrative controls applicable to the hazards and their interrelationships *such as appropriate application of detection methodologies to provide early warning of releases, such as alarms, monitoring instrumentation, and sensors* (emphasis added); (4) consequences of failure of engineering and administrative controls; (5) stationary source siting; (6) human factors; and (7) a qualitative evaluation of a range of the possible safety and health effects of failure of controls;

b. If the holes in the wall between Chlorine Tank Room and the room in which the operator of the process sits were present at the time the last PHA was conducted, the PHA failed to address the hazards to safety and health from such holes. The EPA Inspectors noticed that these holes created a vacuum effect, drawing air into the operator room, which had no chlorine detectors. The person sitting in that operator room would be at serious risk of being overcome by chlorine gas should a release occur in the Chlorine Tank Room. Respondent's only available PHA recognized the need to be able to isolate the tank room from the plant and outside world in the case of release. By failing to consider the hazards presented by these holes, Respondent failed to meet the requirements of 40 C.F.R. § 68.67(c)(1) and (7) to address the hazards of the process and evaluate the possible safety and health effects of failure of controls.

c. Respondent failed to document that the incomplete PHA was performed by a team with expertise in engineering and process operations, with at least one

team member being an employee with experience and knowledge specific to the process being evaluated and one member who is knowledgeable in the specific process hazard analysis methodology being used, as required by 40 C.F.R.

§ 68.67(d).

d. Respondent failed to retain previous PHAs and updates or revalidations for each process for the life of this process as required by 40 C.F.R. § 68.67(g) (only this one undated PHA was on file despite the fact that Respondent has been operating the process since at least 1999);

44. By failing to address certain safety issues in the PHA; maintain documentation of a complete initial PHA and/or revisions, updates and revalidations of the initial PHA; and document that the PHA was performed by an appropriate team, Respondent violated 40 C.F.R. § 68.67 and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

**Count 4: Failure to Create or Maintain Complete Written Operating Procedures**

45. The allegations in paragraphs 1 through 44 are hereby realleged and incorporated herein by reference.

46. Under 40 C.F.R. § 68.69, the owner or operator of a stationary source with processes subject to RMP Program 3 requirements must compile written operating procedures that provide clear instruction for safely conducting activities involved in each covered process consistent with the process safety information. The operating procedures are required to address at the least the following elements: (a) steps of each operating phase; (b) operating limits; (c) safety and health considerations; and (d) safety systems and their functions.

47. Pursuant to 40 C.F.R. § 68.69(c), the owner or operator shall certify annually that these operating procedures are current and accurate.

48. During the EPA Inspection and review of documents, Mr. Ryan Hines, a facility consultant from Turnkey Compliance Solutions, LLC, told one of the EPA inspectors that while the Facility maintained written operating procedures, Respondent had never certified the standard operating procedures.

49. In addition, during the EPA Inspection, the EPA inspectors learned that the written operating procedures contained further deficiencies, including, but not limited to:

- a. The properties of, and hazards presented by, the chemicals used in the process (i.e., chlorine) were not included in the written operating procedures, as required by 40 C.F.R. § 68.69(a)(3)(i);
- b. Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment were not included in the written operating procedures, as required by 40 C.F.R. § 68.69(a)(3)(ii);
- c. Control measures to be taken if physical contact or airborne exposure occurs were not included in the written operating procedures, as required by 40 C.F.R. § 68.69(a)(3)(iii); and
- d. Safety systems and their functions were not included in the written operating procedures, as required by 40 C.F.R. § 68.69(a)(4).

50. Respondent violated 40 C.F.R. § 68.69 and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), by failing to compile written operating procedures that provide clear instruction for safely conducting activities involved in each covered process.

**Count 5: Failure to Adequately Train Employees in Operating Procedures**

51. The allegations in paragraphs 1 through 50 are hereby realleged and incorporated herein by reference.

52. Under 40 C.F.R. § 68.71, each employee involved in operating a covered process subject to RMP Program 3 requirements must be trained in an overview of the process and in the operating procedures for that process, including an emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. Refresher training must be provided at least every three years, and more often if necessary. The owner or operator must maintain documentation of meeting these training requirements.

53. During the EPA Inspection, Mr. Kenneth Prior, an employee involved in the chlorine process as a "waste treatment operator" at the facility, told the EPA inspectors that he had been "grandfathered" on the operating procedures in 1999, but that he had not had any refresher training on the proper operation of the covered process since that time. Under 40 C.F.R. § 68.71(b), refresher training must be provided at least every three years, or more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. Accordingly, Mr. Prior needed refresher training in 2002, 2005, 2008, and 2011.

54. In addition, during the EPA Inspection, the EPA inspectors reviewed training records and learned that Respondent's records fail to include any indication pertaining to how the Respondent verified that its employees understood the training, as required by 40 C.F.R. § 68.71(c).

55. Accordingly, Respondent failed to properly train each employee involved in operating a covered process at the Facility and document that each employee understood the training, in violation of 40 C.F.R. § 68.71 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

**Count 6: Failure to Comply with Mechanical Integrity Requirements for All Processes**

56. The allegations in paragraphs 1 through 55 are hereby realleged and incorporated herein by reference.

57. Under 40 C.F.R. § 68.73, the owner or operator of a stationary source with processes subject to RMP Program 3 requirements must establish and implement written procedures to maintain the ongoing integrity of process equipment, ensure that inspections and testing procedures in accordance with recognized and generally accepted good engineering practices are performed on all process equipment, document each inspection and test performed on process equipment, and correct any deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner.

58. During the EPA Inspection, EPA inspectors requested to see Respondent's written procedures pertaining to the maintenance of the on-going integrity of process equipment. Based on the responses made by Respondent's employees and its consultant, as well as the EPA inspectors' review of documents, the EPA inspectors determined that several unsafe conditions observed at the Facility during the EPA Inspection could have been addressed had Respondent conducted a proper mechanical integrity assessment. The conditions include but are not limited to:

- a. Respondent failed to perform and/or document the calibration and maintenance of the chlorine detectors in the Chlorine Tank Room, in violation of the requirements of 40 C.F.R. § 68.73(d), which requires inspections and tests to be performed on all process equipment, including monitoring devices and sensors. Nor were written procedures established to perform the inspection and testing of the chlorine detectors in accordance with the manufacturers' recommendations despite the requirements of 40 C.F.R. §§ 68.73(b) (which requires written procedures to maintain the ongoing integrity of

process equipment) and 68.73(d)(3) (which specifies that such testing must be consistent with manufacturing recommendations and RAGAGEP);

b. A broken chlorine vent line located inside the Chlorine Tank Room was taped together rather than correctly repaired, in violation of the requirements of 40 C.F.R. § 68.73(e), which requires correction of deficiencies in equipment, including piping systems, that are outside acceptable limits. Facility personnel explained that the vent line had been cut by a contractor eight months prior to the EPA inspection.

c. At the time of the EPA Inspection, EPA inspectors were informed that Respondent had installed an incorrect chlorine pump on Tank 1 of the cyanide waste water treatment process, which caused the pump to fail. The failure forced the facility into using bleach as a temporary fix. This pump went out of service in October 2011. The use of an unsuitable replacement pump violates the quality assurance requirements of 40 C.F.R. § 68.73(f)(3), which requires owners and operators to ensure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.

59. Accordingly, Respondent violated 40 C.F.R. § 68.73 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), by failing to: (1) establish and implement written procedures to maintain the ongoing integrity of process equipment; (2) ensure that inspections and testing procedures follow recognized and generally accepted good engineering practices are performed on all process equipment; (3) document each inspection and test performed on process equipment; (4) correct any deficiencies in equipment that are outside acceptable limits before

further use or in a safe and timely manner; and (5) ensure that replacement equipment met quality assurance requirements.

**Count 7: Failure to Implement a Management of Change Program**

60. The allegations in paragraphs 1 through 59 are hereby realleged and incorporated herein by reference.

61. Forty C.F.R. § 68.75 provides that the owner or operator shall establish and implement written procedures to manage changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process. The procedures shall assure that owner or operator has considered the technical basis for the proposed change, the impact of the change on health and safety, modifications to operating procedures, necessary time period for the change, and authorization requirements for the proposed change. The change may result in revisions to training, process safety information, or operating procedures. If the change is significant enough to require a change in the process safety information, the owner or operator must also comply with the pre-start-up review procedures of 40 C.F.R. § 68.77.

62. The EPA Inspectors discovered that Respondent had made the following changes to the stationary source (i.e., the Facility) and equipment without implementing or documenting management of change procedures:

- a. As referenced in paragraph 38(c) and 43(b) above, there were holes in the wall between the Chlorine Tank Room and a room in which the operator of the process sits (“operator room”). The inspectors noticed that these holes created a vacuum effect, drawing air into the operator room, which had no chlorine detectors. The person sitting in that operator room would be at serious risk of being overcome by chlorine gas should a release occur in the Chlorine Tank Room. Respondent’s

own Process Hazard Analysis recognized the need to be able to isolate the tank room from the plant and outside world in the case of release.

- b. As referenced in paragraph 58(c) above, in 2011, Respondent changed out a chlorine pump with a replacement that was not a "replacement in kind." The new pump was problematic and failed. Moreover, as a result of that failure, Respondent temporarily used bleach instead of chlorine gas in the process without documenting any management of change procedures. Additionally, the P&IDs identify a 2.0 horsepower ("HP") pump for cyanide reactor #1 and a 3.0 HP pump for cyanide reactor #2, with a handwritten change in which the 2.0 and 3.0 are lined out and 1 ½ is added to the figures. Although the pen-and-ink change is not dated or signed, the facility's executive summary for its RMP references the 2.0 and 3.0 HP pumps. A change in HP would represent an equipment change warranting implementation of the management of change procedures.

63. Accordingly, Respondent violated 40 C.F.R. § 68.75 and CAA Section 112(r)(7)(E), 42 U.S.C. § 7412(r)(7)(E), by failing to implement management of change procedures.

**Count 8: Failure to Establish a Contractor Program**

64. The allegations in paragraphs 1 through 63 are hereby realleged and incorporated herein by reference.

65. Under 40 C.F.R. § 68.87(b), the owner or operator of a stationary source with processes subject to RMP Program 3, is required to obtain and evaluate information regarding the contract owner and operator's safety performance and programs when selecting contractors who perform maintenance, turnaround, major renovation, or specialty work on or adjacent to a covered process. In addition, this regulation requires the owner or operator to: (a) inform the

contractor of known potential fire, explosion, or toxic release hazards related to the contractor's work and the process; (b) explain to the contractor the applicable provisions of 40 C.F.R., Part 68 Subpart E (Emergency Response); (c) develop and implement safe work practices consistent with 40 C.F.R. § 68.69(d) (Operating Procedures), to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas; and (d) periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in 40 C.F.R. § 69.87(b)(5).

66. During EPA's Inspection and document review, Respondent was unable to produce records demonstrating compliance with the requirements of 40 C.F.R. § 68.87. Mr. Ryan Hines, a representative from TurnKey Compliance Solutions, LLC and consultant for Respondent, stated that Respondent has not developed the required contractor program despite retaining numerous contractors to work on, and in proximity to, the covered process.

67. Accordingly, Respondent failed to comply with the contractor requirements, in violation of 40 C.F.R. § 68.87 and CAA Section 112(r)(7)(E).

**Count 9: Failure to Comply with Emergency Response Plan Requirements**

68. The allegations in paragraphs 1 through 67 are hereby realleged and incorporated herein by reference.

69. Under 40 C.F.R § 68.90, the owner or operator of stationary source with Program 3 processes shall comply with the emergency response program requirements of 40 C.F.R § 68.95 unless such owner or operator's employees will not be responding to accidental releases and various other requirements are met. Forty C.F.R. § 68.95 requires, in part, the development and implementation of an emergency response program for the purpose of protecting public health and the environment. The emergency response program must set forth procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.

Additionally, the owner or operator must provide training for all employees in relevant emergency procedures.

70. Respondent's RMP indicates that its employees will respond to minor accidental releases at the Facility, so 40 C.F.R. § 68.95 applies to Respondent.

71. During the EPA Inspection and document review, EPA inspectors learned that while Respondent developed an emergency response plan ("ERP"), the facility's ERP was insufficient in several respects, including but not limited to:

- a. Respondent has failed to maintain emergency response equipment. Specifically, Mr. Hines stated that the facility's portable chlorine detectors have never been calibrated or maintained. Also, fixed chlorine detectors and an alarm had not been tested, maintained, or calibrated. Therefore, the facility is not in compliance with 40 C.F.R § 68.95(a)(2), which requires that Respondent develop and implement procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.
- b. The facility emergency responders have not had required annual HAZWOPER training since 2009, and, therefore, Respondent fails to comply with 40 C.F.R § 68.95(a)(3), which requires development and implementation of training for all employees in relevant emergency response procedures. Respondent's employee training reports from its training book recognizes that employees responding to chlorine releases need eight hours of annual HAZWOPER refresher training.

72. Accordingly, Respondent violated 40 C.F.R § 68.90, C.F.R. § 68.95, and CAA Section 112(r)(7)(E), 42 U.S.C. § 112(r)(7)(E), by failing to develop and implement an adequate and complete emergency response program for the purpose of protecting public health and the environment.

**Count 10: Failure to Adequately Conduct an Off-site Consequence Analysis**

73. The allegations in paragraphs 1 through 72 are hereby realleged and incorporated herein by reference.

74. Under 40 C.F.R. § 68.20, an owner or operator of a stationary source with processes subject to RMP Program 3 is required to perform a hazard assessment, including a worst-case release scenario analysis, as provided in 40 C.F.R. § 68.25, and an alternative release scenario analysis, as provided in 40 C.F.R. § 68.28. Both 40 C.F.R. §§ 68.25 and 68.28 require use of the offsite consequence analysis parameters designated in 40 C.F.R. § 68.22. To determine whether a toxic plume might be impeded in its spread, 40 C.F.R. § 68.22(e) requires consideration of surface roughness in conducting such release scenario analyses, including the designation of either urban or rural topography, as appropriate. The term “urban” means that there are many obstacles, such as buildings or trees, in the immediate area, whereas “rural” means that there are no buildings in the immediate area, and the terrain is generally flat and unobstructed.

75. Respondent failed to comply with 40 C.F.R §§ 68.22, 68.25, and 68.28, as follows:

- a. Respondent failed to use the proper parameter in its worst-case and alternative release scenario analyses and substantially underestimated the actual potential harm and scope of a release of chlorine gas (a toxic gas);

b. When developing the scenarios included in the facility's 2009 RMP submittal to the EPA CDX system, the facility used an "urban" setting instead of a "rural" setting. Respondent's use of the "urban" setting reduces the extent of a release as compared to a "rural" setting. The "urban" setting postulates that the surrounding terrain includes many obstacles in the immediate area of the release that would reduce the overall plume. The value in the facility's RMP submittal was 0.9 miles, but with a "rural" setting, the plume distance would have been represented as 2.2 miles. Respondent identified the overall residential population at risk as 6,900 people, whereas the population at risk should be approximately 38,700. The actual population at risk includes people in a neighboring town.

c. There are no obstacles near or around the "Chlorine Tank Room" which contains the chlorine 1-ton cylinders. The "urban" setting was also incorrectly used for the alternative release scenario analysis. Therefore, a parameter used in the worst-case and alternative release scenario analyses does not represent the facility's actual setting and underestimates the off-site consequences of a release.

76. By failing to designate the correct choice for "surface area roughness" (also known as "surrounding terrain type"), Respondent violated 40 C.F.R. §§ 68.22, 68.25, and 68.28, and CAA Section 112(r)(7)(E), 42 U.S.C. § 112(r)(7)(E).

#### **V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY**

77. In determining the amount of any penalty to be assessed for the CAA violations alleged above, pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA will take into account the size of the business, the economic impact of the penalty on the business, Respondent's prior compliance history and good faith efforts to comply, the duration of the

violation, payment by Respondent of any penalties previously assessed for the same violation, any economic benefit or savings accrued to Respondent resulting from the violation, and the seriousness of the violation. In assessing this penalty sought in this Complaint, Complainant has taken into account the particular facts and circumstances of this matter, in accordance with EPA's Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68, dated June 2012 (the "CAA Penalty Policy"). A copy of the CAA Penalty Policy is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

78. Based on the foregoing allegations and pursuant to the authority of Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), as amended, the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. §§ 2461 *et seq.*, the DCIA, 31 U.S.C. §§ 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, Complainant seeks to assess a civil penalty of **\$233,600** against Respondent, as follows. Subparagraphs (a) through (j) reflect the "seriousness" component associated with each violation, and subparagraph (k) reflects the remaining adjustments:

- a. Count 1: Failure to Correct Submitted RMP and Management System Documentation After Change in Emergency Contact. Respondent failed to update RMP by changing the person responsible for the RMP from Claudia Bechard to Niko Giannopoulos. Ms. Bechard left employment in June, 2011 and the Respondent had failed to reflect this change at the time of the EPA Inspection. This violation is significant because an RMP helps facility personnel and emergency responders to assess and manage the hazards that are posed by

chemicals at a facility so that the threat and impacts of releases are minimized, and their ability to manage those hazards is hampered when emergency contact information in the RMP is not regularly updated. Respondent's violation is considered to represent a minor potential for harm and a moderate extent of deviation. EPA is requesting a penalty of \$7,500 for this violation.

b. Count 2: Failure to Comply with All Required Process Safety Information Requirements. At the time of the EPA Inspection, Respondent failed to include certain required information concerning its process into the PSI documentation; including but not limited to its failure to document safety information pertaining to the chlorine hoist and have accurate P&ID diagrams. Also, Respondent failed to document and demonstrate that certain equipment was operating in accordance with RAGAGEP, including, but not limited to its chlorine detectors. Compiling proper process safety information allows a facility to understand the hazards of its process and develop good operating procedures, training, and mechanical integrity programs. Furthermore, compliance with RAGAGEP promotes safe operation of the process. The violations comprising this count are considered to be a moderate potential for harm a moderate extent of deviation. EPA is requesting a penalty of \$12,500 for this violation.

c. Count 3: Failure to Perform a Complete and Accurate Process Hazard Analysis. During the EPA Inspection, Respondent was only able to produce one incomplete and undated PHA. The PHA is required to be updated and revalidated every five years, and every PHA must be maintained for the life of the process. Among other things, Respondent's PHA failed to evaluate the need for chlorine

sensors within the waste treatment and loading dock areas, failed to address the human health risk from the holes in the wall of the Chlorine Tank Room, and failed to document that the PHA was performed by a team with expertise in engineering and process operations. This violation is significant due to the extremely hazardous nature of chlorine gas and because without proper hazard analyses for the chlorine process at the Facility, Respondent was unable to design and maintain the Facility in a way that considers those potential hazards and minimizes the consequences of any accidental releases that do occur. This violation represents a major potential for harm and a major extent of deviation. EPA requests a penalty of \$33,750.

d. Count 4: Failure to Create or Maintain Complete Written Operating Procedures. The written operating procedures for the chlorine process failed to include several pieces of required information, such as the properties of the chemicals used in the process; precautions necessary to prevent exposure (such as personal protective equipment); control measures to be taken if exposure occurs; and information on safety systems to include safety and health concerns. Moreover, the facility has failed to certify their operating procedures. This violation is significant because failing to have complete operating procedures in place increases the risk that dangerous chemicals will be mishandled. This violation represents a moderate potential for harm and a minor extent of deviation. EPA requests a penalty of \$2,000.

e. Count 5: Failure to Adequately Train Employees in Operating Procedures. Refresher training in operating procedures is required every three

years. The waste treatment operator was allegedly trained in 1999 but Respondent failed to provide refresher training. Additionally, Respondent failed to document how Respondent verified that employees understood the training. This violation is significant because chlorine gas is extremely hazardous and because providing refresher training every three years to employees who work with RMP chemicals and covered processes decreases the risk of an accidental release or incident involving the chemical. This violation represents a moderate potential for harm and a moderate extent of deviation. EPA requests a penalty of \$12,500.

f. Count 6: Failure to Comply with Mechanical Integrity Requirements for All Processes. This violation includes but is not limited to, Respondent's failures to: (a) perform and document calibration and maintenance of chlorine detectors; (b) correctly repair a broken chlorine vent line; and (c) ensure that a replacement pump was suitable for the process. This violation is significant because ensuring the mechanical integrity of equipment used in the chlorine process decreases the risk of an accidental release or other emergency involving the chlorine gas. This represents a major potential for harm and a moderate extent of deviation. EPA requests a penalty of \$17,500.

g. Count 7: Failure to Implement a Management of Change Program. A properly implemented management of change program ensures that no changes are made to the Facility, equipment, or process technology without full consideration of the consequences of such changes. Respondent's failure to implement or document management of change procedures before leaving holes

in the wall of the Chlorine Tank Room put the process operator at risk of being exposed to any release of chlorine gas occurring in the Chlorine Tank Room. Failure to consider the implications of replacing a chlorine pump with one that was not appropriate for the process likewise could have put employees at risk. This violation represents a major potential for harm and a moderate extent of deviation. EPA requests a penalty of \$17,500.

h. Count 8: Failure to Establish a Contractor Program. At the time of the EPA Inspection, Respondent failed to produce records documenting that it had: (a) informed each contractor of known hazards related to the contractor's work and the chlorine process at the Facility; (b) explained emergency response procedures to the contractor; (c) developed and implemented safe work practices for the contractor and its employees in the chlorine process areas of the Facility; and (d) periodically evaluated the performance of the contractor. This violation is significant because failure to act in compliance with the regulatory requirements could result in safety issues for the contractor and its employees and could result in unsafe conditions should the contractor not act in conformance with the regulations. This violation represents a moderate potential for harm and a major extent of deviation. EPA requests a penalty of \$27,500.

i. Count 9: Failure to Comply with Emergency Response Plan Requirements. Respondent has a written emergency ERP in place but has failed to complete the training required for the ERP. Additionally, Respondent has failed to maintain and calibrate chlorine detectors that are intrinsic to Respondent's ERP. Additionally, Respondent failed to update its emergency

contact change and has not listed Niko Giannopoulos as the current emergency contact. This violation is significant because the failure to implement the ERP correctly can result in Respondent's failure to respond effectively and safely to a release of an extremely hazardous substance. This violation represents a major potential for harm and a major extent of deviation. EPA requests a penalty of **\$33,750**.

j. Count 10: Failure to Adequately Conduct an Off-site Consequence Analysis. The Facility's worse-case and alternative release scenario offsite consequence analysis is a major component of its hazard assessment, which is used by both the facility and emergency planners to estimate potential impacts associated with a release of chlorine. Respondent's risk analysis identified the facility's setting as "urban" (i.e., having numerous obstacles to impede the spread of a toxic gas plume). The correct setting is "rural." The worse-case off-site consequence is 2.2 miles, had the analysis been performed correctly, versus the 0.9 miles as stated in Respondent's RMP. As a result, the correct analysis should have shown that approximately 38,700 people would have been affected rather than 6,630. This is significant because Respondent's response to a release could have been inadequate as a result of its incorrect assessment. This violation represents a moderate potential for harm and a minor extent of deviation. EPA requests a penalty of **\$2,000**.

k. Other Penalty Policy Factors: The subtotal from above is \$166,500. Other penalty policy factors include the duration of the violation, the size of violator, history of non-compliance, good-faith efforts to comply, degree of

culpability and the economic impact of the penalty. Of these, EPA proposes the following upward adjustments to the "seriousness" component:

- i. *Duration of Violations*: The duration of violations is least 26 months, for an upward adjustment of \$31,500.
- ii. *Size of Violator*: The upward adjustment proposed is \$20,000.
- iii. *Economic Benefit of Non-compliance*: The upward adjustment proposed to account for Respondent's economic benefit of non-compliance is \$15,600.

No further adjustments to the proposed penalty were deemed appropriate at this time. However, EPA will consider whether other adjustments, especially a downward adjustment for economic impact of the penalty and ability to continue in business ("Ability to Pay"), are appropriate if Respondent raises them in its Answer or during the course of settlement negotiations. If Respondent claims that the penalty should be reduced due to Ability to Pay, Respondent should provide supporting documentation to EPA for its consideration. See page 20 of the CAA Penalty Policy for a list of such documentation.

## **VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

79. Pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A); and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Any request for a hearing must be included in Respondent's written Answer to this Complaint and

filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

80. In its Answer, a Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate or that it has an inability to pay the penalty; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts the Respondent intends to place at issue.

81. The original and one copy of any motions or other pleadings filed or made before an Answer to the Complaint is filed, the Answer to the Complaint, and any Consent Agreement and Final Order to settle the case filed in this action must be sent to:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: ORA 18-1)  
Boston, Massachusetts 02109-3912

82. After an Answer has been filed, except for a Consent Agreement and Final Order settling the case, a copy of all other documents Respondent files in this action must be sent to the Headquarters Hearing Clerk, in the following manner:

For U.S. Postal Service mailings -  
Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900R  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

For UPS, FedEx, DHL or other courier, or personal delivery -  
Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm. M1200  
1300 Pennsylvania Ave., NW  
Washington, DC 20460

83. The original and one copy of the Answer, as well as a copy of all other documents

which Respondent files in this action, must be sent to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 (ORA18-1)  
Boston, MA 02109-3912

Respondent should also send a copy of the Answer, as well as a copy of all other documents

which Respondent files in this action, to Steven Schlang, the attorney assigned to represent EPA.

and who is designated to receive service in this matter at:

Steven Schlang  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 (OES04-4)  
Boston, MA 02109-3912  
Tel: (617) 918-1773

84. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

85. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

**VII. INFORMAL SETTLEMENT CONFERENCE**

86. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

87. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondent or its representative should contact Steven Schlang, Enforcement Counsel, at (617) 918-1773.

88. *Quick Resolution:* Respondent may also resolve the proceeding at any time by paying the specific penalty proposed in the Complaint, as more fully explained in 40 C.F.R. § 22.18. If Respondent pays the proposed penalty in full within 30 days of after receiving the Complaint then no Answer need be filed.

**VIII. CONTINUED COMPLIANCE OBLIGATION**

89. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with 40 C.F.R. Part 68 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Susan Studlien

Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1 – New England

09/30/13  
Date