



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

ONE CONGRESS STREET SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

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2008 SEP 30 P 3:22



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**BY HAND**

September 30, 2008

Wanda Rivera  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
1 Congress Street  
Suite 1100, Mail Code RAA  
Boston, MA 02114-2023

Re: In the Matter of Simoniz USA, Inc.,  
Docket Nos.: EPCRA-01-2008-0110; CAA-01-2008-0111.

Dear Ms. Rivera:

Enclosed for filing in the referenced action, please find the original and one copy of an Administrative Complaint and Notice of Opportunity for Hearing, which seeks penalties for alleged violations of Section 313 of the Emergency Planning and Community Right-to-Know Act and of Section 112(r) of the Clean Air Act. A certificate of service is also enclosed.

Thank you for your attention to this matter.

Sincerely,

Wesley Kelman  
Enforcement Counsel

Enclosures

cc: William Gorra, Simoniz USA, Inc.  
William Hibbard, Simoniz USA, Inc.  
Chris Rascher, EPA Office of Environmental Stewardship

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
BEFORE THE ADMINISTRATOR**

2008 SEP 30 P 3: 22

In the Matter of: )

) Docket Nos.

EPCRA-01-2008-0110

CAA-01-2008-0111

**SIMONIZ USA, INC.** )

201 Boston Turnpike )

Bolton, CT 06043 )

**ADMINISTRATIVE COMPLAINT**

**and**

**NOTICE OF OPPORTUNITY FOR HEARING**

Respondent. )

**STATEMENT OF AUTHORITY**

1. The United States Environmental Protection Agency issues this Complaint to Respondent Simoniz USA, Inc. ("Simoniz" or "Respondent") pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter "EPCRA"); Sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B); and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), set forth at 40 C.F.R. Part 22 ("Part 22"). The Complaint is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA").

**NATURE OF THE ACTION**

2. The Complaint notifies Simoniz of EPA's intention to assess penalties for violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and Section 112(r) of the CAA, 42 U.S.C. § 7412(r). The



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

3. The Complaint alleges that Simoniz: (a) failed to submit timely Toxic Chemical Release Inventory Reporting Forms, as required by Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder at 40 C.F.R. Part 372; and (b) operated its facility without having submitted a Risk Management Plan, as required by Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder at 40 C.F.R. §§ 68.1-68.220.

**STATUTORY FRAMEWORK AND GENERAL ALLEGATIONS:**  
**SECTION 313 OF EPCRA**

4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372.
5. Section 313(a) of EPCRA, 42 U.S.C. §11023(a), and 40 C.F.R. §§ 372.22 and 372.30, require owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. §11023(f). Each Form R is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located.
6. Under Section 313(b) of EPCRA, 42 U.S.C. §11023(b), and 40 C.F.R. § 372.22, the requirement to submit a Form R applies to any owner or operator of a facility that meets the following three conditions: (i) the facility has 10 or more full-time employees; (ii) for facilities that are not multi-establishment complexes, the facility is in one of the Standard Industrial Classification

- Codes 20 through 39 or is in certain other industry codes listed in 40 C.F.R. § 372.23; and (iii) the facility manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f).
7. Simoniz is a corporation organized under the laws of the State of Connecticut.
  8. Simoniz is a “person,” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
  9. Simoniz owns and operates a facility at 201 Boston Turnpike, Bolton, CT (the “Facility”), which is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
  10. The Facility has 10 or more “full-time employees,” as that term is defined by 40 C.F.R. § 372.3.
  11. The Facility is classified in Standard Industrial Classification codes 20 through 39 and is not a multi-establishment complex.
  12. During the calendar years 2004, 2005 and 2006, the Facility manufactured, processed or otherwise used toxic chemicals listed under 40 C.F.R. § 372.65 in quantities exceeding the established thresholds.
  13. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to Simoniz’s Facility.

**STATUTORY FRAMEWORK AND GENERAL ALLEGATIONS:**  
**SECTION 112(R) OF THE CLEAN AIR ACT**

14. 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 certain regulated



substances, including a requirement that owners or operators of certain stationary sources prepare and implement risk management plans (“RMPs”).

15. Under 40 C.F.R. § 68.10(a), 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, including the requirement to submit an RMP under 40 C.F.R. § 68.12(a). The RMP must be submitted by whichever date is latest among the following dates: (1) June 21, 1999, (2) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130, or (3) the date on which a regulated substance is first present above a threshold quantity in a process.
16. Under Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), after the effective date of any regulation or requirement imposed under Section 112(r), 42 U.S.C. § 7412(r), including the requirement to submit an RMP under 40 C.F.R. § 68.12(a), it is unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement.
17. The term “stationary source” is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3, in pertinent part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, are located on one or more contiguous properties, are under the control of the same person, and from which an accidental release may occur.
18. The term “regulated substance” is defined by 40 C.F.R. § 68.3 as any substance listed in 40 C.F.R. § 68.130.
19. The term “threshold quantity” is defined by 40 C.F.R. § 68.3 as the quantity listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40

C.F.R. § 68.115. Under 40 C.F.R. § 68.115, a threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold listed in 40 C.F.R. § 68.130, unless the regulated substance is present in a mixture in a low concentration or in certain regulated flammable substances, as further described in 40 C.F.R. § 68.115(b).

20. The term “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.
21. Simoniz’s Facility includes building(s) or structure(s) which belong to the same industrial group, are located on contiguous property, are under the control of the same person, and from which an accidental release may occur. The Facility is therefore a “stationary source” within the meaning of 40 C.F.R. § 68.3.
22. Hydrogen fluoride (concentration 50% or greater) has been listed as a regulated toxic substance under 40 C.F.R. § 68.130, Table 1, since January 31, 1994.
23. The threshold quantity for hydrogen fluoride (concentration 50% or greater) under 40 C.F.R. § 68.130 is 1,000 pounds.
24. Simoniz has stored, used and/or handled more than 1,000 pounds of hydrogen fluoride (concentration 50% or greater) at the Facility during each of the five years preceding the date of this Complaint. Hydrogen fluoride (concentration 50% or greater) is a raw material used in the formulation of Simoniz’s products.
25. The storage, use and/or handling of hydrogen fluoride (concentration 50% or greater) at the Facility constituted a “process,” as that term is defined at 40 C.F.R. § 68.3.

26. The amount of hydrogen fluoride (concentration 50% or greater) stored, used and/or handled at the Facility has exceeded the threshold for this chemical set forth in 40 C.F.R. § 68.130 during each of the five years preceding the date of this Complaint, and the exemptions in 40 C.F.R. § 68.115(b) do not apply. Therefore, more than a threshold quantity of a regulated substance was present at the Facility during the five years preceding the date of this Complaint.
27. Simoniz was required to file an RMP when the amount of hydrogen fluoride (concentration 50% or greater) at the Facility first exceeded the threshold quantity in a process, in accordance with 40 C.F.R. §§ 68.10(a) and 68.12(a).
28. The preceding paragraphs are incorporated by reference in each of the violations below:

#### **EPCRA VIOLATIONS**

##### **Count 1: 2005 Failure to Report Ethylene Glycol**

29. During the calendar year 2005, Simoniz manufactured, processed or otherwise used ethylene glycol, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical on or before July 1, 2006.
30. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2006.
31. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

##### **Count 2: 2006 Failure to Report Ethylene Glycol**

32. During the calendar year 2006, Simoniz manufactured, processed or otherwise used ethylene glycol, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical on or before July 1, 2007.



33. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2007.
34. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 3: 2004 Failure to Report Certain Glycol Ethers

35. During the calendar year 2004, Simoniz manufactured, processed or otherwise used certain glycol ethers, a chemical category under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical category on or before July 1, 2005.
36. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2005.
37. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 4: 2005 Failure to Report Certain Glycol Ethers

38. During the calendar year 2005, Simoniz manufactured, processed or otherwise used certain glycol ethers, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical category on or before July 1, 2006.
39. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2006.
40. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 5: 2006 Failure to Report Certain Glycol Ethers

41. During the calendar year 2006, Simoniz manufactured, processed or otherwise used certain glycol ethers, a chemical category listed under 40 C.F.R. § 372.65, in a quantity exceeding the

established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical category on or before July 1, 2007.

42. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2007.

43. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 6: 2004 Failure to Report Methanol

44. During the calendar year 2004, Simoniz manufactured, processed or otherwise used methanol, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical on or before July 1, 2005.

45. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2005.

46. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 7: 2005 Failure to Report Methanol

47. During the calendar year 2005, Simoniz manufactured, processed or otherwise used methanol, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical on or before July 1, 2006.

48. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2006.

49. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 8: 2006 Failure to Report Methanol

50. During the calendar year 2006, Simoniz manufactured, processed or otherwise used methanol, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical on or before July 1, 2007.
51. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2007.
52. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 9: 2004 Failure to Report Hydrogen Fluoride

53. During the calendar year 2004, Simoniz manufactured, processed or otherwise used hydrogen fluoride, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical on or before July 1, 2005.
54. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2005.
55. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 10: 2005 Failure to Report Hydrogen Fluoride

56. During the calendar year 2005, Simoniz manufactured, processed or otherwise used hydrogen fluoride, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical on or before July 1, 2006.
57. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2006.



58. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 11: 2006 Failure to Report Hydrogen Fluoride

59. During the calendar year 2006, Simoniz manufactured, processed or otherwise used hydrogen fluoride, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Simoniz was therefore required to submit to the Administrator of EPA a Form R for this chemical on or before July 1, 2007.

60. Simoniz failed to submit this form to the Administrator of EPA on or before July 1, 2007.

61. Simoniz's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

**CAA VIOLATION**

Count 12: Operating Without Submission of an RMP

62. During the five years preceding the date of this Complaint, more than the threshold quantity of hydrogen fluoride (concentration 50% or greater), as set forth in 40 C.F.R. § 68.130, was used in a process at the Facility.

63. Pursuant to 40 C.F.R. §§ 68.10(a) and 68.12(a), Simoniz was required to file an RMP when the amount of the regulated substance exceeded the threshold quantity in a process.

64. Under Section 112(r)(7)(E), 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to a regulation or requirement imposed under Section 112(r)(7) in violation of such regulation or requirement.

65. Simoniz has not filed an RMP in accordance with 40 C.F.R. Part 68.

66. The failure of Simoniz to file an RMP and its continued operation of the Facility violated 40 C.F.R. §§68.10(a) and 68.12(a) and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

### **PROPOSED CIVIL PENALTY (EPCRA)**

67. Under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1) (as amended by the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the Debt Collection Improvement Act, 31 U.S.C. § 3701) and the Rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, any person who violates any requirement of Section 313 of EPCRA after March 15, 2004 shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each such violation.
68. The proposed civil penalty has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). For purposes of determining the amount of any penalty to be assessed, EPA considered the nature, circumstances, extent and gravity of the violations, and with respect to Simoniz, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require. To develop the proposed penalty in this Complaint, EPA has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)" (amended 1996, 1997, and 2001) ("ERP"). This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. A copy of the ERP is enclosed with this Complaint.
69. The ERP states that a penalty should be determined in two stages: (1) determination of a "gravity-based penalty," and (2) adjustments to the gravity-based penalty. The gravity-based penalty should be determined by considering the "circumstance level" and the "extent level" of a violation. The circumstance level of a violation takes into account the seriousness of the



violation as it relates to the accuracy and availability of the information to the community, to states, and to the federal government. The extent level of a violation is based upon the quantity of each EPCRA Section 313 chemical manufactured, processed, or otherwise used by the facility and the size of the facility, which is based upon the number of employees and the gross sales of the violator. The ERP also allows adjustments to the penalty if the violation was voluntarily disclosed, the facility has had a prior violation, or the subject chemical has been delisted.

70. On the basis of the above variables, EPA has determined the amount of the civil penalty to be assessed against Simoniz. As described below, this penalty was computed by using a multiple-stage process in accordance with the ERP.
71. The first stage requires the determination of the circumstance level of the violation. Simoniz failed to submit, within one year of the July 1 due date, Form Rs for calendar years 2004 and 2005 for chemicals listed under 40 CFR § 372.65 that it manufactured, processed or otherwise used in quantities exceeding the established threshold. Because Simoniz was more than a year late submitting these Form Rs, the applicable circumstance level for the counts pertaining to EPCRA violations for calendar years 2004 and 2005 (i.e., Counts 1, 3, 4, 6, 7, 9, and 10) is “Level 1.”
72. Simoniz submitted Form Rs for calendar year 2006, which were due on July 1, 2007, on January 8, 2008. Because Simoniz was less than a year late submitting these Form Rs, the applicable circumstance level for the counts pertaining to EPCRA violations for calendar year 2006 (i.e., Counts 2, 5, 8, and 11) is “Level 4.”
73. The second stage in calculating the proposed penalty requires the determination of the extent level. Simoniz manufactured, processed or otherwise used less than ten times the threshold of ethylene glycol, hydrogen fluoride, and methanol. In addition, Simoniz has more than ten



million dollars in total corporate sales and more than fifty employees at the violating facility.

Based on the amount of the Section 313 chemicals and chemical categories used and the size and sales of the corporate entity, the extent level applicable to the ethylene glycol, hydrogen fluoride and methanol counts (i.e., Counts 1-2 and 6-11) is "Level B."

74. Simoniz manufactured, processed or otherwise used more than ten times the threshold of certain glycol ethers. In addition, Simoniz has more than ten million dollars in total corporate sales and more than fifty employees at the violating facility. Based on the amount of the Section 313 chemicals and chemical categories used and the size and sales of the corporate entity, the extent level applicable to the glycol ether counts (i.e., Counts 3-5) is "Level A."
75. In addition to the determination of the gravity-based penalty, EPA considered certain other factors that may be used to adjust the penalty amount, including: voluntary disclosure, history of prior violations, whether the chemicals were delisted, economic benefit from violation, adjustment for attitude, and other factors that justice may require. EPA considered that Simoniz failed to voluntarily disclose the violations (which were discovered during an inspection), that it had no history of prior violations, that the subject chemicals had not been delisted, and that there are no factors of which EPA is aware that suggest justice may require a different penalty or that Simoniz lacks an ability to pay. EPA therefore proposes no adjustments to the gravity-based penalty amount. Note, however, that the proposed penalty is based upon the best information available to EPA at this time, and may be adjusted if Simoniz establishes bona fide issues of ability to pay or other facts relevant to the appropriate amount of the proposed penalty.
76. Based upon the foregoing factors, EPA proposes that Simoniz be assessed a civil penalty in the amount of two hundred forty-two thousand two hundred dollars (\$242,200) for the EPCRA violations alleged in this Complaint. For each violation, the proposed penalty is as follows:

Count 1 (2005 Ethylene Glycol – Level 1B): .....	\$21,922
Count 2 (2006 Ethylene Glycol – Level 4B): .....	\$14,926
Count 3 (2004 Glycol Ethers – Level 1A): .....	\$32,500
Count 4 (2005 Glycol Ethers – Level 1A): .....	\$32,500
Count 5 (2006 Glycol Ethers – Level 4A): .....	\$22,831
Count 6 (2004 Methanol – Level 1B): .....	\$21,922
Count 7 (2005 Methanol – Level 1B): .....	\$21,922
Count 8 (2006 Methanol – Level 4B): .....	\$14,926
Count 9 (2004 Hydrogen Fluoride – Level 1B): .....	\$21,922
Count 10 (2005 Hydrogen Fluoride – Level 1B): .....	\$21,922
Count 11 (2006 Hydrogen Fluoride – Level 4B): .....	\$14,926
EPCRA Total <sup>1</sup>	\$242,200

### **PROPOSED CIVIL PENALTY (CAA)**

77. Under Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B) (as amended by the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the Debt Collection Improvement Act, 31 U.S.C. § 3701) and the Rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, any person who violates Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), after January 30, 1997 and on or before March 15, 2004 shall be liable to the United States for a civil penalty in an amount not to exceed \$27,500 per day for each such violation. Any person who violates Section 112(r)(7)(E) of the CAA after March 15, 2004 shall

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<sup>1</sup> The total proposed penalty for EPCRA violations has been rounded down to the nearest hundred, in accordance with the ERP.



be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each such violation.

78. Based on the foregoing allegations and pursuant to the authority of Section 113(d) of CAA, 42 U.S.C. § 7413(d), EPA proposes that Simoniz be assessed a civil penalty in the amount of \$159,000 for its violations of the CAA. In accordance with Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and EPA's August 15, 2001 Combined Enforcement Policy for Section 112(r) of the Clean Air Act, a copy of which is enclosed, EPA considered the following in determining the amount of the proposed civil penalty: the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require. These factors have been grouped as gravity components and economic benefit components, as shown in the tables below.

79. The amount of the civil penalty proposed in the preceding paragraph was calculated as follows:

**Gravity Components of Proposed CAA Civil Penalty**

<b>Factors</b>	<b>Comments</b>	<b>Amount</b>
Seriousness of Violation	Midpoints of "moderate" extent (\$18,500) and "moderate" impact (12.5% adjustment) ranges chosen, based on failure to file RMP, high quantity and relative dangerousness of unpressurized hydrogen fluoride. Program 2 eligibility assumed.	\$20,800
Duration of Violation	RMP not filed for last five years.	\$84,000
Size of Violator	Based on average gross revenues.	\$50,000
Subtotal		\$154,800



**Economic Benefit Components of Proposed CAA Civil Penalty**

<b>Factors</b>	<b>Comments</b>	<b>Amount</b>
Avoided and Delayed Cost Benefit	Assumes Simoniz is eligible for RMP Program 2 and that two compliance audits have been avoided.	\$4,558
Adjustments	None.	(\$0)
Subtotal		\$4,558
CAA Total (rounded down, nearest thousand)		\$159,000

80. Neither assessment nor payment of a civil penalty shall affect Simoniz's continuing obligation to comply with CAA, the regulations promulgated thereunder, or any other applicable Federal, State or local law.
81. EPA and the Attorney General of the U.S. Department of Justice have determined jointly that this Complaint, which addresses CAA violations that commenced more than twelve (12) months ago but does not seek more than \$270,000 in CAA penalties, is an appropriate administrative penalty action under Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1), as adjusted by the Rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19.

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

82. In accordance with 40 C.F.R. § 22.15, Simoniz has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalties. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22, a copy of which is enclosed herewith.
83. **To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and having the above-cited penalties assessed without further proceedings, Simoniz must file a written Answer within thirty (30)**

**days of Simoniz's receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Simoniz has any knowledge. If Simoniz has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Simoniz's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Simoniz denies any material fact or raises any affirmative defense, Simoniz will be considered to have requested a hearing.

84. The Answer should be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
One Congress Street (Mail Code RAA)  
Boston, Massachusetts, 02114-2023.

85. Simoniz should also send a copy of the Answer and all other documents filed in this action to Wesley Kelman, the attorney assigned to represent EPA in this matter, at: Wesley Kelman, U.S. Environmental Protection Agency, Region 1, One Congress Street (Mail Code SES), Boston, Massachusetts 02114-2023.

86. If Simoniz fails to file a timely answer to the Complaint, Simoniz may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Simoniz constitutes an admission of all facts alleged in the Complaint and a waiver of Simoniz's right to contest such factual allegations.

#### **QUICK RESOLUTION**

87. Under Section 22.18(a) of the Consolidated Rules of Practice, Simoniz has the option of resolving this matter at any time by paying the penalties proposed in this Complaint in full.



Payment of the penalties must be made by submitting a bank, cashier's or certified check payable to the Treasurer, United States of America, to: U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000. The penalty payment check must refer to the title of this proceeding ("In the Matter of Simoniz USA, Inc.") and its Docket Numbers. Copies of the check must also be mailed to the Regional Hearing Clerk and to Wesley Kelman at the addresses cited above.

88. If Simoniz pays the proposed penalties in full within thirty (30) days after receiving this Complaint, then Simoniz need not file an Answer to the Complaint. If Simoniz wishes to resolve this matter without having to file an Answer but needs additional time in which to do so, Simoniz may file a written statement with the Regional Hearing Clerk at the address above within thirty (30) days of receiving the Complaint. The written statement must specify that Simoniz agrees to pay the penalties within sixty (60) days of receipt of the Complaint. Failure to make such payment within the sixty (60) days may subject Simoniz to a default action. Upon receipt of payment in full, the Regional Judicial Officer shall issue a final order. Payment by Simoniz shall constitute a waiver of Simoniz's rights to contest the allegations and to appeal the final order.

#### **INFORMAL SETTLEMENT CONFERENCE**

89. Whether or not Simoniz requests a hearing, Simoniz may confer informally with Chris Rascher, Enforcement Coordinator in EPA Region I's Office of Environmental Stewardship (617-918-1834), concerning the facts of this case or the amount of the proposed penalties and the possibility of settlement. Simoniz's attorney is encouraged to contact Wesley Kelman, Enforcement Counsel, at 617-918-1540, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference. **Please note that a request for an informal**



**settlement conference does not enlarge the thirty-day period within which a written**

**Answer must be submitted to avoid default.**

90. Payment of the civil penalties alone does not satisfy Simoniz's legal obligation to file complete and accurate toxic chemical release forms (Form R) or an RMP. If Simoniz chooses to remit the proposed penalties, it is still under a legal duty to submit complete and accurate Form Rs and a complete and accurate RMP meeting the Program 2 requirements. Failure or refusal to file such documents may subject Simoniz to additional civil penalties of up to \$32,500 per day for each violation.
91. Wesley Kelman, Enforcement Counsel, at the above address and telephone, has been designated to represent EPA and is authorized to receive service of process on behalf of EPA in this action.

09/25/08  
Date

Susan Studlien  
Susan Studlien  
Director, Office of Environmental Stewardship

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
BEFORE THE ADMINISTRATOR**

In the Matter of: \_\_\_\_\_ )

**SIMONIZ USA, INC.**  
201 Boston Turnpike  
Bolton, CT 06043 )

Respondent. \_\_\_\_\_ )

) Docket Nos. EPCRA-01-2008-0110  
) CAA-01-2008-0111  
)

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

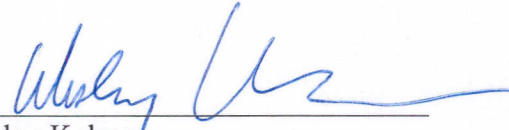
Original and One Copy,  
By Hand:

Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
One Congress Street (Mail Code RAA)  
Boston, MA 02114-2023

Copy, including 40 C.F.R.  
Part 22, EPCRA Section 313  
Enforcement Response Policy,  
Combined Enforcement Policy  
for § 112(r) of the Clean Air Act,  
Certified Mail Return Receipt  
Requested:

William Gorra, President  
Simoniz USA Inc.  
201 Boston Turnpike  
Bolton, CT 06043

Dated: September 30, 2008

  
\_\_\_\_\_  
Wesley Kelman  
U.S. Environmental Protection Agency, Region 1  
One Congress Street (Mail Code SES)  
Boston, Massachusetts 02114-2023  
Telephone: (617) 918-1540  
Fax: (617) 918-0540