UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 23 2011

CERTIFIED MAIL – RETURN RECEIPT

James F. Kirsch
Chairman, President and CEO
Ferro Corporation
Headquarters
1000 Lakeside Avenue
Cleveland, OH 44114-7000

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING**
In the matter of: Ferro Corporation, CAA-02-2011-1217

Dear Mr. Kirsch:

Enclosed herewith is a copy of the above-referenced COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING (Complaint) directed to you on behalf of Ferro Corporation, which is being filed for the purpose of proposing a penalty pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401 et seq., § 7413(d). The Complaint alleges violations of Sections 112, 114 and Title V of the Act. The total amount of the penalty proposed is $213,848.

I direct your attention to the section of the Complaint entitled, "NOTICE OF OPPORTUNITY FOR A HEARING." If you wish to contest any of the allegations of the Complaint or the amount of the proposed penalty, you must do so within the time specified in the notice or you may lose the opportunity for a hearing. You must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or EPA may file a motion for default judgment. If the motion is granted, the proposed penalty will become due and payable thirty (30) days after a final order. A copy of the procedural rules is enclosed for reference.

Counsel designated to appear on behalf of the Complainant in this matter is Kara E. Murphy, who can be reached at (212) 637-3211 or by mail at the address listed below. I call your attention to the section of the Complaint entitled, "SETTLEMENT CONFERENCE." EPA is prepared to begin to pursue settlement of this matter immediately and I encourage you or your attorney, if you are represented, to contact EPA counsel regardless of whether you are interested in contesting this matter.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

✓ 40 C.F.R. Part 22, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits.

✓ Clean Air Act Stationary Source Civil Penalty Policy

✓ cc: Regional Hearing Clerk (With: Original Complaint with Certificate of Service and one copy of Cornplaint with Certificate of Service):

Karen Maples
Regional Hearing Clerk
United States Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007-1866

Counsel on behalf of EPA:

Kara E. Murphy
Assistant Regional Counsel
Office of Regional Counsel
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cc: Karl P. Kriger, Plant Manager
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Edward Choromanski, Administrator
Air Compliance & Enforcement, NJDEP
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Trenton, NJ 08625

Richelle Wormley, Regional Enforcement Officer
NJDEP Southern Enforcement Office
One Port Center
2 Riverside Drive, Suite 201
Camden, NJ 08102

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In re: Ferro Corporation, **Respondent** In a proceeding under Section 113(d) of the Clean Air Act	**COMPLAINT** **and** **NOTICE OF OPPORTUNITY** **TO REQUEST A HEARING** CAA-02-2011-1217

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) under the authority of Section 113(d), 42 U.S.C. § 7413(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2. The Complainant is delegated, on behalf of Region 2, the authority to issue administrative Complaints under Section 113(d) of the CAA for violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

Section 113(d) of the Act authorizes EPA to bring an administrative penalty action in a matter involving a violation that occurred more than twelve months prior to the initiation of an action, and to seek an administrative penalty that exceeds the amount provided by Statute, where the Administrator and the Attorney General jointly determine that such an action is appropriate. On September 21, 2011, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the time limitation provided in Section 113(d) of the Act.

In this Complaint, the Director finds that Respondent's Logan Township, New Jersey chemical facility (Facility) is subject to and in violation of the leak detection and repair (LDAR) regulations set forth in 40 C.F.R. Part 63, Subpart FFFF, (§§ 63.2430 – 63.2550) (MON MACT), 40 C.F.R. Part 63, Subpart H, (§§ 63.160 – 63.183) (HON), and the corresponding provisions in the Facility's CAA Title V Operating Permit. Pursuant to Section 113(d) and (e) of the Act, the Clean Air Act Stationary Source Civil Penalty Policy, and the Debt Collection Improvement Act of 1996, EPA proposes a civil administrative penalty for those violations of **$213,848**.

STATUTORY, REGULATORY, and PERMITTING BACKGROUND

CAA Enforcement, Information Gathering and Section 302 Provisions

1. Section 113(a)(3) of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act, including regulations promulgated under Sections 112 and 114, and permits issued pursuant to a State title V program adopted and approved pursuant to title V of the Act.

2. Section 113(d)(1)(A) and (B) of the Act, authorizes EPA to issue an administrative order against any person whenever, on the basis of any available information, the Administrator finds that such person has or is violating any requirements or prohibitions of title I, III, IV-A, V, or VI of the Act including but not limited to a requirement or prohibition of any rule, order, waiver, permit or plan promulgated, issued or approved under the Act.

3. Section 114(a)(1) of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

4. Section 302(e) of the Act defines the term "person" as an individual, corporation, partnership, association, state municipality, political subdivision of a state, and an agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

CAA Section 112 Statutory and Regulatory Authority

5. Section 112 of the Act requires the Administrator to publish a list of hazardous air pollutants (HAPs), a list of categories and subcategories of major and area sources of listed HAPs, and to promulgate regulations establishing emission standards, referred to as National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for each category or subcategory of major and area sources of HAPs.

6. Section 112(a)(1) of the Act defines a "major source" as any stationary source or group of stationary sources located within a contiguous area and under

common control that emits or has the potential to emit ten (10) tons per year (tpy) or more of any HAP or twenty-five (25) tpy or more of any combination of HAPs.

7. Section 112(b) of the Act provides a list of the applicable HAPs and directs the Administrator to periodically review the list, and where appropriate, revise the list to include additional HAPs.

8. Section 112(c) of the Act requires the Administrator to publish a list of categories or subcategories of major and area sources of listed HAPs.

9. Section 112(d) of the Act requires the Administrator to promulgate regulations establishing NESHAPs for each category or subcategory of major and area sources of HAPs. Standards promulgated pursuant to Section 112 of the CAA are known as NESHAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63.

10. Section 112(d) of the CAA also directs EPA to promulgate emissions standards based on the maximum achievable control technology (MACT), and also allows EPA to elect to promulgate, in lieu of MACT standards, emission standards for "area" sources, as that term is defined in Section 112(a) of the Act, that are based on generally available control technology (GACT).

11. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

Part 63 NESHAP General Provisions

12. On March 16, 1994, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart A, §§ 63.1 – 63.16 (Part 63 NESHAP General Provisions).

13. The Part 63 NESHAP General Provisions set forth definitions and general requirements applicable to all sources subject to any NESHAP promulgated under Section 112 of the CAA, as amended in 1990.

14. 40 C.F.R. § 63.1(a)(4)(i) provides that each relevant standard in 40 C.F.R. Part 63 must identify explicitly whether each provision in the Part 63 NESHAP General Provisions is or is not included in such relevant standard.

15. 40 C.F.R. § 63.1(b) provides that the provisions of 40 C.F.R. Part 63 apply to the owner or operator of any stationary source that: (i) emits or has the potential to emit any HAP listed in or pursuant to Section 112(b) of the Act; and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to Part 63.

16. 40 C.F.R. § 63.1(c) provides that if a relevant standard has been established under Part 63, the owner or operator of an affected source must comply with the provisions of that standard and of the Part 63 NESHAP General Provisions, as provided in 40 C.F.R. § 63.1(a)(4).

17. 40 C.F.R. § 63.2 defines "affected source," for the purposes of Part 63, as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is

established pursuant to Section 112 of the Act. This definition of "affected source" applies to each Section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.

18. 40 C.F.R. § 63.2 defines "existing source" as any affected source that is not a new source.

19. 40 C.F.R. § 63.2 defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source.

20. 40 C.F.R. § 63.2 defines "stationary source" as any building, structure, facility, or installation that emits or may emit any air pollutant.

21. Pursuant to 40 C.F.R. § 63.6(c)(1), after the effective date of a relevant standard established under 40 C.F.R. Part 63, the owner/operator of an existing source must comply with such standard by the compliance date established by the Administrator in the applicable Subpart(s) of 40 C.F.R. Part 63.

MON MACT

22. On November 10, 2003, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart FFFF, §§ 63.2430 – 63.2550, the NESHAP for miscellaneous organic chemical manufacturing (MON MACT).

23. Pursuant to 40 C.F.R. § 63.2435(a), the MON MACT provides requirements for owners and operators of miscellaneous organic chemical manufacturing process units (MCPUs) located at, or that are part of, a major source of HAP emissions as defined in Section 112(a) of the Act. The MON MACT requirements include, among other requirements, emission limits, leak repair, recordkeeping and reporting requirements.

24. Pursuant to 40 C.F.R. § 63.2435(b), an MCPU includes equipment necessary to operate a miscellaneous organic chemical manufacturing process, as defined in § 63.2550, that satisfies all of the conditions specified in § 63.2435(b)(1) through (3). An MCPU also includes any assigned storage tanks and transfer racks; equipment in open systems that is used to convey or store water having the same concentration and flow characteristics as wastewater; and components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are used to manufacture any material or family of materials described in § 63.2435(b)(1)(i) through (v).

25. Pursuant to 40 C.F.R. § 63.2435(b)(1), the MCPU produces any material or family of materials that is described in § 63.2435(b)(1)(i) through (v):

a. § 63.2435(b)(1)(i): an organic chemical(s) classified using the 1987 version of SIC code 282, 283, 284, 285, 286, 287, 289, or 386, except as provided in § 63.2435(c)(5);

b. § 63.2435(b)(1)(ii): an organic chemical(s) classified using the 1997 version of NAICS code 325, except as provided in § 63.2435(c)(5);

c. § 63.2435(b)(1)(iii): quaternary ammonium compounds and ammonium sulfate produced with caprolactam;

d. § 63.2435(b)(1)(iv): hydrazine; and/or

e. § 63.2435(b)(1)(v): organic solvents classified in any of the SIC or NAICS codes listed in § 63.2435(b)(1)(i) or (ii) that are recovered using nondedicated solvent recovery operations.

26. Pursuant to 40 C.F.R. § 63.2435(b)(2), an MCPU processes, uses, or generates any of the organic HAP listed in Section 112(b) of the Act or hydrogen halide and halogen HAP, as defined in § 63.2550.

27. Pursuant to 40 C.F.R. § 63.2435(b)(3), an MCPU is not an affected source or part of an affected source under another Subpart, except for those process vents from batch operations within a chemical manufacturing process unit (CMPU), as identified in § 63.100(j)(4).

28. Pursuant to 40 C.F.R. § 63.2445(b), if a facility is an existing source on November 10, 2003, then the facility must comply with the MON MACT requirements for existing sources no later than May 10, 2008. *See also* § 63.6(c)(1) and Table 12 of the MON MACT.

29. Pursuant to 40 C.F.R. § 63.2480(a), an owner or operator of an MCPU to which the MON MACT applies must comply with each requirement specified in Table 6 of the MON MACT that applies to equipment leaks, except as specified in paragraphs (b) through (d) of § 63.2480.

30. Table 6 of the MON MACT indicates that as required in § 63.2480, an owner or operator must comply with each requirement specified in Table 6 of the MON MACT that applies to the owner or operators equipment leaks.

31. Table 6, 1.b, of the MON MACT provides the requirements of specific Subparts that the owner or operator must comply with, including 40 C.F.R. Part 63, Subpart H, for equipment leaks from all equipment that is in organic HAP service as stated in § 63.2480. Table 6, 1.b of the MON MACT also indicates that the owner or

operator subject to Subpart H must comply with the requirements of Subpart H and the requirements referenced therein, except as specified in § 63.2480(b) and (d).

32. Pursuant to 40 C.F.R. § 63.2480(b), an owner or operator complying with 40 C.F.R. Part 63, Subparts H or UU may elect to comply with the provisions in § 63.2480(b)(1) through (b)(5) as an alternative to the provisions in Subparts H or UU.

33. Pursuant to 40 C.F.R. § 63.2480(b)(4), for connectors in gas/vapor and light liquid service at an existing source, an owner or operator may elect to comply with the requirements in § 63.169 or § 63.1029 for connectors in heavy liquid service, including all associated recordkeeping and reporting requirements, rather than the requirements of § 63.174 or § 63.1027.

Reporting

34. Pursuant to 40 C.F.R. § 63.2520(a), owners or operators subject to the MON MACT must submit each report specified in Table 11 of the MON MACT as applicable.

35. Pursuant to 40 C.F.R. § 63.2520(b) and as specified in Table 11 of the MON MACT, the owner or operator subject to the MON MACT must submit semi-annual compliance reports identifying any failure to comply with the MON MACT requirements.

36. Pursuant to 40 C.F.R. § 63.2520(e), the compliance report must contain the information specified in paragraphs § 63.2520(e)(1) through (10).

37. Pursuant to 40 C.F.R. § 63.2520(e)(5), the compliance report must contain the information on deviations, as defined in § 63.2550, according to paragraphs (e)(5)(i) through (iv) of § 63.2520.

38. Pursuant to 40 C.F.R. § 63.2520(e)(9), the compliance report must include applicable records and information for periodic reports as specified in referenced Subparts, including 40 C.F.R. Part 63, Subpart H.

39. Pursuant to 40 C.F.R. § 63.2540, Table 12 of the MON MACT identifies the sections of the Part 63 NESHAP General Provisions that apply to owners and operators who must comply with the MON MACT, and includes, but is not limited to § 63.1(b), § 63.1(c), § 63.6(c)(1), and § 63.2.

Definitions

40. Pursuant to 40 C.F.R. § 63.2550(i), all other terms used in the MON MACT are defined in the CAA, in 40 C.F.R. § 63.2, and in § 63.2550(i). If a term is defined in, among other Sections, § 63.2 and § 63.2550(i), the definition in § 63.2550(i) applies for purposes of the MON MACT.

41. Pursuant to 40 C.F.R. § 63.2550(i), deviation means any instance in which an affected source subject to the MON MACT, or an owner or operator of such a source fails to:

> (1) Meet any requirement or obligation established by the MON MACT including, but not limited to, any emission limit, operating limit, or work practice standard; or
>
> (2) Meet any term or condition that is adopted to implement an applicable requirement in the MON MACT and that is included in the operating permit for any affected source required to obtain such a permit; or
>
> (3) Meet any emission limit, operating limit, or work practice standard in the MON MACT during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by the MON MACT.

42. Pursuant to 40 C.F.R. § 63.2550(i), equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in organic HAP service; and any control devices or systems used to comply with Table 6 of the MON MACT.

43. Pursuant to 40 C.F.R. § 63.2550(i), in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5% by weight of total organic HAP as determined according to § 63.180(d).

44. Pursuant to 40 C.F.R. § 63.2550(i), miscellaneous organic chemical manufacturing process means all equipment that collectively function to produce a product or isolated intermediate that are materials that are described in § 63.2435(b).

The HON

45. On April 22, 1994, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart H, §§ 63.160 – 63.183, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (HON).

46. Pursuant to 40 C.F.R. § 63.160, the HON applies to, among other things, pumps, compressors, agitators, pressure relief devices, open-ended valves or lines, valves, and connectors that are intended to operate in organic HAP service 300 hours or more during the calendar year within a source subject to the provisions of a specific Subpart in 40 C.F.R. Part 63 that references the HON, which in this case is the MON MACT. *See* 40 C.F.R. § 63.2480.

47. Pursuant to 40 C.F.R. § 63.161, all terms used in the HON must have the meaning given them in the Act and in § 63.161, except as provided in any Subpart that references the HON.

48. Pursuant to 40 C.F.R. § 63.161, connector is defined as flanged, screwed, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. This Section further provides that a common connector is a flange and that joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of the HON. This Section also indicates that for the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, glass, or glass-lined as described in § 63.174(h) of the HON.

49. Pursuant to 40 C.F.R. § 63.161, in heavy liquid service is defined as a piece of equipment in organic HAP service that is not in gas/vapor service or in light liquid service.

50. Pursuant to 40 C.F.R. § 63.161, in light liquid service is defined as a piece of equipment in organic HAP service that contains a liquid that meets the following conditions: (1) the vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20° C; (2) the total concentration of the pure organic compounds constituents having a vapor pressure greater than 0.3 kilopascals at 20° C is equal to or greater than 20% by weight of the total process stream; and (3) the fluid is a liquid at operating conditions.

51. Pursuant to 40 C.F.R. § 63.161, pressure relief device or valve is defined as a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. This Section further provides that a common pressure relief device is a spring-loaded pressure relief valve and that devices that are actuated either by a pressure of less than or equal to 2.5 psig or by a vacuum are not pressure relief devices.

52. Pursuant to 40 C.F.R. § 63.161, process unit is defined as a chemical manufacturing process unit as defined in, among other Subparts, 40 C.F.R. Part 63, that reference the HON, which in this case is the MON MACT.

53. Pursuant to 40 C.F.R. § 63.161, repaired is defined as equipment that (1) is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of the HON, and (2) unless otherwise specified in applicable provisions of the HON, is monitored as specified in § 63.180(b) and (c), as appropriate, to verify that emissions from the equipment are below the applicable leak definition.

54. Pursuant to 40 C.F.R. § 63.161, screwed connector is defined as a threaded pipe fitting where the threads are cut on the pipe wall and the fitting requires only two pieces to make the connection (i.e., the pipe and the fitting).

55. Pursuant to 40 C.F.R. § 63.162(a), compliance with the HON will be determined by review of the records required by § 63.181 of the HON, review of the reports required by § 63.182 of the HON, review of performance test results, and by inspections.

56. Pursuant to 40 C.F.R. § 63.162(c), each piece of equipment in a process unit to which the HON applies must be identified such that it can be distinguished readily from equipment that is not subject to the HON. This Section further states that identification of the equipment does not require physical tagging of the equipment and provides these examples: the equipment may be identified on a plant site plan, in log entries, or by designation of process unit boundaries by some form of weatherproof identification.

57. Pursuant to 40 C.F.R. § 63.162(f), when each leak is detected as specified in § 63.163 and § 63.164; § 63.168 and § 63.169; and § 63.172 through § 63.174 of the HON the following requirements apply:

a. § 63.162(f)(1): clearly identify the leaking equipment.

b. § 63.162(f)(2): the identification on a valve may be removed after it has been monitored as specified in § 63.168(f)(3), and § 63.175(e)(7)(i)(D) of the HON, and no leak has been detected during the follow-up monitoring.

c. § 63.162(f)(3): the identification which has been placed on the equipment determined to have a leak, except for a valve or for a connector that is subject to the provisions of § 63.174(c)(1)(i), may be removed after it is repaired.

Pumps

58. Pursuant to 40 C.F.R. § 63.163(a), the provisions of § 63.163 apply to each pump that is in light liquid service.

59. Pursuant to 40 C.F.R. § 63.163(a)(1), the provisions of § 63.163 are to be implemented on the dates specified in the specific Subparts of 40 C.F.R. Part 63 that reference the HON, which in this case is the MON MACT.

60. Pursuant to 40 C.F.R. § 63.163(b)(1), the owner or operator of a process unit subject to the HON must monitor each pump monthly to detect leaks by the Method specified in § 63.180(b) of the HON and must comply with the requirements of § 63.163(a) through (d), except as provided in § 63.162(b) of the HON and § 63.163(e) through (j) of the HON.

61. Pursuant to 40 C.F.R. § 63.163(b)(3), each pump must be checked by visual inspection each calendar week for indications of liquids dripping from the pump

seal. This Section further provides that if there are indications of liquids dripping from the pump seal, a leak is detected.

Valves

62. Pursuant to 40 C.F.R. § 63.168(a), the provisions of § 63.168 apply to valves that are either in gas service or in light liquid service.

63. Pursuant to 40 C.F.R. § 63.168(a)(1), the provisions of § 63.168 are to be implemented on the dates set forth in the specific Subparts of 40 C.F.R. Part 63 that reference the HON, as specified in either § 63.168(a)(1)(i), (ii), or (iii).

64. Pursuant to 40 C.F.R. § 63.168(a)(1)(iii), sources subject to other Subparts of 40 C.F.R. Part 63 that reference the HON must comply on the dates specified in the applicable Subpart, which in this case is the MON MACT.

65. Pursuant to 40 C.F.R. § 63.168(b), the owner or operator of a source subject to the HON must monitor all valves, except as provided in § 63.162(b) of the HON and paragraphs § 63.168(h) and (i), at the intervals specified in § 63.168(c) and (d) and must comply with all other provisions of § 63.168, except as provided in § 63.171, § 63.177, § 63.178 and § 63.179 of the HON.

66. Pursuant to 40 C.F.R. § 63.168(b)(1), the valves must be monitored to detect leaks by the method specified in § 63.180(b) of the HON.

67. Pursuant to 40 C.F.R. § 63.168(b)(2)(iii), under Phase III, an instrument reading of 500 parts per million (ppm) or greater defines a leak for valves.

68. Pursuant to 40 C.F.R. § 63.168(d), under Phase III, the owner or operator shall monitor valves for leaks at the intervals specified below:

a. § 63.168(d)(1): At process units with 2 percent or greater leaking valves, calculated according to paragraph (e) of this section, the owner or operator must either:

   i. Monitor each valve once per month; or

   ii. Within the first year after the onset of Phase III, implement a quality improvement program for valves that complies with the requirements of § 63.175 (d) or (e) of this subpart and monitor quarterly.

b. § 63.168(d)(2): At process units with less than 2 percent leaking valves, the owner or operator must monitor each valve once each quarter, except as provided in paragraphs (d)(3) and (d)(4) of this section.

c. § 63.168(d)(3): At process units with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 quarters.

d. § 63.168(d)(4): At process units with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every 4 quarters.

69. Pursuant to 40 C.F.R. § 63.168(f)(1), when a leak is detected, it must be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 63.171 of the HON.

70. Pursuant to 40 C.F.R. § 63.168(f)(3), when a leak has been repaired, the valve must be monitored at least once within the first 3 months after its repair.

71. Pursuant to 40 C.F.R. § 63.168(f)(3)(i), the monitoring must be conducted as specified in § 63.180(b) and (c), as appropriate, to determine whether the valve has resumed leaking.

Pumps, valves, connectors and agitators in heavy liquid service for connectors

72. Pursuant to 40 C.F.R. § 63.169(a), pumps, valves, connectors and agitators in heavy liquid service, pressure relief devices in light liquid or heavy liquid

service, and instrumentation systems must be monitored within 5 calendar days by the method specified in § 63.180(b) of the HON if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method. This Section further provides that if such a potential leak is repaired as required in § 63.169(c) and (d) of the HON, it is not necessary to monitor the system for leaks by the method specified in § 63.180(b) of the HON.

73. Pursuant to 40 C.F.R. § 63.169(b), if an instrument reading, among other things, of 500 ppm or greater for valves, connectors, instrumentation systems and pressure relief devices is measured, a leak is detected.

Monitoring Methods

74. Pursuant to 40 C.F.R. § 63.180(a), each owner or operator subject to the HON must comply with the test methods and procedure requirements provided in § 63.180.

75. Pursuant to 40 C.F.R. § 63.180(b)(1), monitoring must comply with Method 21 of 40 C.F.R. Part 60, Appendix A.

76. 40 C.F.R. § 63.180(b)(2)(i) indicates, among other things, that the detection instrument must meet the performance criteria of Method 21 of 40 C.F.R. Part 60, Appendix A.

77. Pursuant to 40 C.F.R. § 63.180(b)(3), the instrument must be calibrated before each use on each day of its use by the procedures specified in Method 21 of 40 C.F.R. Part 60, Appendix A.

78. 40 C.F.R. § 63.180(b)(4) provides, among other things, that calibration gases must be: (i) zero air (less than 10 ppm of hydrocarbon in air); and (ii) mixtures of methane in air at the concentration specified in § 63.180(b)(4)(ii)(A) through (C).

79. 40 C.F.R. § 63.180(b)(5) provides that monitoring must be performed when the equipment is in organic HAP service, in use with an acceptable surrogate VOC, which is not an organic HAP, or is in use with any other detectable gas or vapor.

Reporting

80. Pursuant to 40 C.F.R. § 63.182(a), each owner or operator of a source subject to the HON must submit reports listed in § 63.182(a)(1) through (a)(5). This Section further provides that owners or operators requesting an extension of compliance must also submit the report listed in § 63.182(a)(6).

81. Pursuant to 40 C.F.R. § 63.182(a)(3), each owner or operator must submit Periodic Reports described in § 63.182(d) of the HON.

82. Pursuant to 40 C.F.R. § 63.182(d)(1), the owner or operator of a source subject to the HON must submit Periodic Reports containing the information identified in § 63.182(d)(2), (d)(3), and (d)(4), which must be submitted semi-annually starting 6 months after the Notification of Compliance Status, as required under § 63.182(c) of the HON.

83. 40 C.F.R. § 63.182(d)(2) provides that for each process unit complying with the provisions of § 63.163 through § 63.174 of the HON, the Periodic Reports must include, but is not limited to (see also § 63.2520(e), the summary information listed in § 63.182(d)(2)(i) through (xvi) as follows:

a. § 63.182(d)(2)(i): the number of valves for which leaks were detected as described in § 63.168(b) of the HON, the percent leakers, and the total number of valves monitored.

b. § 63.182(d)(2)(iii): the number of pumps for which leaks were detected as described in § 63.163(b) of the HON, the percent leakers, and the total number of pumps monitored.

c. § 63.182(d)(2)(xiv): the results of all monitoring to show compliance with § 63.164(i), § 63.165(a), and § 63.172(f) of the HON conducted within the semiannual reporting period.

d. § 63.168(d)(2)(xv): if applicable, including but not limited to, the initiation of a monthly monitoring program under § 63.168(d)(1)(i).

84. Pursuant to 40 C.F.R. § 63.182(d)(4), Periodic Reports must also include the information listed in § 63.182(c) for the Notification of Compliance Status for process units with later compliance dates. This Section also provides that the Periodic Reports must also include any revisions to items reported in earlier Notification of Compliance Status reports, if the method of compliance has changed since the last report.

CAA Title V and Implementing Program Requirements

85. Section 501(2) of the Act provides that the term "major source" means any stationary source (or group of stationary sources located within a contiguous area and under common control) that is a major source as defined in Section 112 of the Act, and/or Section 302 of the Act or part D of subchapter I of the Act.

86. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under title V of the Act or to operate a title V affected source, including a major source or any other source (including an area source) subject to standards or regulations under, among other

sections, Sections 112 and 114 of the Act, except in compliance with a permit issued by a permitting authority under title V of the Act.

87. Section 502(b) of the Act requires EPA to promulgate regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency and sets forth the procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs.

88. Pursuant to Section 502(b) of title V of the Act, and consistent with title V requirements, 40 C.F.R. Part 70, among other things, sets forth minimum requirements for state operating permits and 40 C.F.R. Part 71, sets forth the federal title V operating program and defines the requirements and procedures by which EPA will issue title V operating permits.

89. Section 502(d)(1) of the Act requires each State to develop and submit to the Administrator a permit program meeting the requirements of title V of the Act.

90. Section 503(a) of the Act provides that any source specified in Section 502(a) of the Act shall become subject to a permit program and shall be required to have a permit to operate.

91. Section 503(b)(2) of the Act provides that the regulations promulgated pursuant to Section 502(b) of the Act must include requirements that the permittee periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the title V operating permit, and promptly report any deviations from permit requirements to the permitting authority.

92. Section 504(a) of the Act directs that each title V operating permit include enforceable emission limitations and standards, a schedule of compliance,

a requirement that the permittee submit to the permitting authority, no less often than every six (6) months, the results of any required monitoring, and any such other conditions as are necessary to assure compliance with applicable requirements of the Act, including the requirements of the applicable implementation plan.

93. Section 502(e) of the Act provides that EPA maintains its authority to enforce title V operating permits issued by a State.

94. Section 504(a) of the Act provides that a title V permit issued to a source must include all regulations applicable to the source.

95. Section 504(c) of the Act provides that a title V compliance certification submitted at the time of application and annually thereafter, shall include a certification regarding compliance with all applicable regulations and requirements applicable to the source.

96. EPA granted interim approval of the New Jersey Title V Operating Permit Program, with an effective date of June 17, 1996. 61 Fed. Reg. 24715 (May 16, 1996).

97. EPA granted final full approval of the New Jersey Title V Operating Permit Program, with an effective date of November 30, 2001. 66 Fed. Reg. 63168 (December 5, 2001).

98. N.J.A.C. 7:27-22.19(d)(3) provides that all New Jersey title V operating permits shall include a provision that requires six-month deviation reports be submitted to New Jersey, the permitting authority.

99. N.J.A.C. 7:27-22.19(f) provides that all New Jersey title V operating permits shall include a provision that requires annual compliance certifications to be submitted to EPA and NJDEP, the permitting authority.

100. On July 18, 2005, New Jersey Department of Environmental Protection (NJDEP) issued the Facility a title V operating permit, #BOP990001 (Title V Permit).

Title V Permit Requirements

101. Reference #24 of Emission Unit: U2 TCPA in Respondent's Title V Permits, includes the HON as an applicable requirement

102. Reference #25 of Emission Unit: U2 TCPA in Respondent's Title V Permits, includes the MON MACT as an applicable requirement.

103. Reference #12 of Emission Unit: U3 Phosphate Esters in Respondent's Title V Permits, includes the MON MACT as an applicable requirement.

104. Reference #24 of Emission Unit: U4 Benzyl Phthalates in Respondent's Title V Permit BOP080002, includes the MON MACT as an applicable requirement.

105. Reference #24 of Emission Unit: U4 Triethylamine (TEA) Storage Tank, in Respondent's Title V Permit BOP080007, includes the MON MACT as an applicable requirement.

106. Reference #15 of Emission Unit: U4 Triethylamine (TEA) Storage Tank, Operating Scenario: OS2 Triethylamine (TEA) Storage Tank in Respondent's Title V Permits, includes the MON MACT as an applicable requirement.

107. Reference #1 of "Subject Item: FG4 Process D-flanges, valves, pumps, connectors, relief devices," in Respondent's Title V Permit BOP080007, includes the MON MACT as an applicable requirement.

108. Reference #1 of "Subject Item: FG4 Process D-flanges, valves, pumps, connectors, relief devices," in Respondent's Title V Permit BOP080007, includes 40 C.F.R. § 63.182 (HON Periodic Reports Submission) as an applicable requirement.

109. Reference #14 of "Subject Item: FC," in Respondent's Initial and Title V Permits, includes N.J.A.C. 7:27-22.19(d)(3) as an applicable requirement.

110. Reference #7 of "Subject Item: FC," in Respondent's Initial and Title V Permits, includes 7:27-22.19(f) as an applicable requirement.

FINDINGS OF FACT

111. Respondent is the owner and/or operator of the Facility located in Logan Township, New Jersey.

112. The Facility's Standard Industrial Classification (SIC) is 2869 "industrial organic chemicals."

Facility's Title V Operating Permit

113. On July 18, 2005, NJDEP issued the Facility a Title V Permit, BOP990001 (Initial Title V Permit).

114. NYSDEC approved modifications to Respondent's initial Title V Permit (BOP990001) on May 12, 2008 (BOP080002) and July 10, 2009 (BOP080007), referred to hereinafter as the "Modified Title V Permits."

115. The Facility's Initial Title V Permit and Modified Title V Permits indicate that the Facility's total annual HAP emissions exceed 25 tpy for combined HAPs.

116. At all times relevant to this Complaint, Respondent's Facility is a major source as provided in its Initial Title V Permit and Modified Title V Permits.

117. The Facility has 2 MCPUs identified as Phthalate Esters MCPU and the Phosphate Esters MCPU.

118. At all times relevant to this Complaint, Respondent's Modified Title V Permits have included the MON MACT and the HON as applicable requirements.

119. At all times relevant to this Complaint, Reference #7 of "Subject Item: FC of Respondent's Initial Title V Permit and Modified Title V Permits has included N.J.A.C. 7:27-22.19(f) as an applicable requirement, requiring Respondent to submit annual certifications to NJDEP and EPA.

EPA Investigation

120. On August 12-13, 2008, EPA conducted a CAA inspection (2008 Inspection) at Ferro's Facility to determine compliance with the HON requirements.

121. On March 29, 2011, EPA conducted a CAA inspection (2011 Inspection) at Ferro's Facility to determine compliance with the HON requirements.

Ferro's Management System Review

122. The Facility's HON program is managed by Ferro's employees.

123. On June 1, 2008, Ferro hired Karen Anthony to manage Ferro's HON program.

124. Ms. Anthony is responsible for monitoring, oversight of leak repairs and semi-annual reporting.

125. Respondent hired Robert English, a contractor from Marshall Industrial Technologies, to help implement Ferro's HON program.

126. Mr. English was trained shortly before the 2008 Inspection by Ms. Anthony.

127. After Mr. English was trained by Ms. Anthony, he performed all required HON monitoring.

128. Robert Muhlbaier, a Ferro employee, was trained by Ms. Anthony in 2009.

129. Since Mr. Muhlbaier's training, he performs all the required HON monitoring.

130. Ferro owns 2 toxic vapor analyzers (TVAs) 1000As used for leak monitoring.

2008 INSPECTION

Method 21

131. During the 2008 Inspection, Mr. English indicated that he calibrates the TVA each day of monitoring.

132. During the 2008 Inspection, the calibration gases used by Ferro were zero air, 500 ppm CH_4 (methane), and 1,000 ppm CH_4.

133. During the 2008 Inspection, Mr. English was unable to find the certificate of analysis for the zero gas.

134. During the 2008 Inspection, the CH_4 gases were certified to be within ±2% accuracy by the manufacturer.

135. During the 2008 Inspection, on August 12, 2008, EPA observed Mr. English perform an instrument calibration in accordance with Method 21.

Calibration Precision Testing

136. During the 2008 Inspection, Mr. English told EPA that he does not use a zero gas during calibration precision testing.

Response Time Test

137. During the 2008 Inspection, Mr. English told EPA that he does not use a zero gas during the response time test.

Monitoring Technique

138. During the 2008 Inspection, on August 13, 2008, EPA performed compliance monitoring at 152 MON points.

139. Mr. English joined EPA at 14 of the 152 MON points monitored for side by side monitoring to audit Ferro's monitoring technique used.

140. During the side by side monitoring, EPA observed that Mr. English did not place the instrument probe directly at surface of the component interface, rather he placed the probe 1 cm away from the surface.

141. During the side by side monitoring, Mr. English told EPA that every time he monitors a component, he places the probe 1 cm away from the surface.

Identification of the HON Components

142. During the 2008 Inspection, EPA found 3 areas where 156 HON components were not identified as HON components within the MCPUs: Phthalates Esters MCPU where the TEA carbon drums are located, the Phthalates Esters MCPU where the new piping in area of pump 422, and the benzyl phthalates MCPU where a valve on the second floor is located.

143. During the 2008 Inspection, EPA noted that Ferro did not include these 156 unidentified HON components on the HON component list for monitoring.

Follow-up after 2008 Inspection

144. After the 2008 Inspection, on August 25, 2008 Ms. Anthony sent an email to EPA (August 2008 email) in order to provide information pertaining to the violations found at the 2008 Inspection.

145. In the August 2008 email, Ms. Anthony attached a copy of the certificate of analysis for zero gas.

146. In the August 2008 email, Ms. Anthony attached a copy of the updated monitoring forms demonstrating that the 156 unidentified HON components (120 connectors, 29 valves, 2 pumps, 3 plugs, and 2 relief devices) were added to the HON program and the HON component list for monitoring.

147. In another email to EPA, dated May 6, 2011 (May 2011 email), Ms. Anthony provided a report of the initial inspection, dated September 22, 2008, which included a summary and readings of the unidentified HON components.

148. The May 2011 email indicates that after the 2008 Inspection, Ms. Anthony had Ferro's LDAR technician perform the inspection to verify the HON components and she filed the results in a MON MACT binder.

149. Attached to the May 2011 email is a copy of the inspection verifying that 73 HON components (65 connectors, 2 relief devices, and 6 valves) were left off the HON component list.

150. In another email to EPA, dated June 25, 2011 (June 2011 email), Ms. Anthony provided a verification shortly after the 2008 Inspection that Mr. English was re-trained on Method 21.

151. In the June 2011 email, Ms. Anthony also indicated that as of August 2008 all monitoring is in compliance with Method 21.

2011 INSPECTION

Identifying by Tagging and Re-monitoring HON Valves

152. During the 2011 Inspection, EPA examined all leak records, monitoring data, and calibration logs from 2008 to 2011 (Ferro Records).

153. During the 2011 Inspection and after review of the Ferro Records, EPA discovered that Respondent was removing the identifying repair tag on valves before the valves were re-monitored within 3 months after a leak is repaired.

154. During the 2011 Inspection, Ferro informed EPA that it was removing the identifying repair tag on valves before the valves were re-monitored within 3 months after a leak is repaired.

155. During the 2011 Inspection and after review of the Ferro Records, EPA discovered that Respondent was not re-monitoring valves within 3 months after a leak is repaired.

156. The Ferro Records indicate that 2 valves (#503 and #693) leaked at Ferro's Facility.

157. The Ferro Records indicate that valve #503 leaked in 2009.

158. The Ferro Records indicate that valve #693 leaked in 2011.

159. In the June 2011 email, Ms. Anthony indicated that valve #503 leaked on May 19, 2009.

160. In the June 2011 email, Ms. Anthony indicated that Ferro repaired and monitored valve #503 on May 19, 2009.

161. Attached to the June 2011 email, Ms. Anthony provided the Leak Tracking Sheet for valve #503 verifying that the valve leaked on May 19, 2009.

162. The Leak Tracking Sheet for valve #503 also verified that Respondent repaired and monitored valve #503 on May 19, 2009.

163. The Leak Tracking Sheet for valve #503 also verified that Respondent did not re-monitor valve #503 within 3 months after the leak repair.

164. In the June 2011 email, Ms. Anthony indicated that valve #503 was monitored during the next scheduled annual monitoring run on April 7, 2010 with a reading of 0 ppm.

165. Attached to the June 2011 email, Ms. Anthony included the database sheet verifying that valve #503 was monitored on April 7, 2010 with a reading of 0 ppm.

166. In the June 2011 email, Ms. Anthony indicated that on March 26, 2011 valve #693 was leaking.

167. In the June 2011 email, Ms. Anthony indicated that on March 26, 2011, the same day as the leak, Respondent repaired and monitored valve #693 with a reading of 0 ppm.

168. In the June 2011 email, Ms. Anthony indicated that on March 31, 2011, Respondent re-monitored valve #693 within the first 3 months with a reading of 0 ppm.

169. Attached to the June 2011 email, Ms. Anthony included a Leak Tracking Sheet for valve #693 verifying the leak on March 26, 2011.

170. The Leak Tracking Sheet for valve #693 also verified that Respondent repaired and monitored valve #693 on March 26, 2011 with a reading of 0 ppm.

171. The Leak Tracking Sheet for valve #693 also verified that Respondent re-monitored valve #693 on March 31, 2011 with a reading of 0 ppm.

Semi-annual HON Periodic Reports

172. Respondent's semi-annual HON periodic report for the second half of 2008 did not include its failures to properly conduct calibration precision testing, response time tests, and to use proper monitoring technique, as detailed in paragraphs 136-141, and 150-151 above.

173. Respondent's semi-annual HON periodic report for the second half of 2008 did not include its failures to identify 156 HON components, as detailed in paragraphs 142-143, and 146-149 above.

174. Respondent's semi-annual HON periodic report for the second half of 2009 did not include its failures to maintain identification of 2 valves by leaving on a tag until the 2 valves are re-monitored within 3 months, as detailed in paragraphs 152-171 above.

175. Respondent's semi-annual HON periodic report for the second half of 2009 did not include its failure to re-monitor 1 valve within the first 3 months after a repair, as detailed in paragraphs 152-165 above.

Title V Annual Certification

176. Respondent's 2008 title V annual certification did not include its failures to properly conduct calibration precision testing, response time tests, and to use proper monitoring technique, as detailed in paragraphs 136-141, and 150-151 above.

177. Respondent's 2008 title V annual certification did not include its failure to identify 156 HON components, as detailed in paragraphs 142-143, and 146-149 above.

178. Respondent's 2009 title V annual certification did not include its failures to maintain identification of 2 valves by leaving on a tag until the 2 valves are re-monitored within 3 months, as detailed in paragraphs 152-171 above.

179. Respondent's 2009 title V annual certification did not include its failure to re-monitor 1 valve within the first 3 months after a repair, as detailed in paragraphs 152-165 above.

CONCLUSIONS OF LAW

180. From the Findings of Fact as set forth above, Respondent is a "person" with the meaning of Section 302(e) of the Act.

181. From the Findings of Fact set forth above, Respondent is the subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

182. From the Findings of Fact as set forth above, the Facility is a "major source" within the meaning of Section 112(a)(1) and as indicated in the Facility's Initial and Title V Permits.

183. Respondent's Facility is subject to the conditions in its Title V Permits.

184. From the Findings of Fact as set forth above, Respondent's Facility is subject to the MON MACT, promulgated pursuant to Sections 112 and 114 of the Act.

185. From the Findings of Fact as set forth above, Respondent's Facility is subject to the HON, promulgated pursuant to Sections 112 and 114 of the Act.

Count 1 - Failures to Properly Conduct Calibration Precision Testing; Properly Conduct Response Time Tests; Use Proper Monitoring Technique

186. Paragraphs 1-185 are repeated and re-alleged as if set forth fully herein.

187. Each of Respondent's failures to properly conduct calibration precision testing, properly conduct response time tests, and use the proper monitoring technique specified in Method 21 is a violation of 40 C.F.R. § 63.180(b)(1).

188. Each of Respondent's violations of 40 C.F.R. §§ 63.180(b)(1) is a violation of Sections 112 and 114 of the Act.

189. Each of Respondent's violations of the corresponding MON MACT and the HON References in the Facility's Modified Title V Permits is a violation of the NJ Title V Operating Program and Title V of the Act.

Count 2 - Failures to identify 153 HON components and monitor 153 components

190. Paragraphs 1-189 are repeated and re-alleged as if set forth fully herein.

191. EPA concludes that 153 out of the 156 components were subject to the HON requirements within the meaning of 40 C.F.R. § 63.160.

192. Each of Respondent's failures to timely identify 153 HON components subject to the HON requirements is a violation of 40 C.F.R. § 63.162(c), which led to a

failure to monitor the 153 HON components in violation of 40 C.F.R. § 63.163(b)(1), § 63.163(b)(3), § 63.168(b), § 63.168(d), and § 63.169(a).

193. Each of Respondent's violations of 40 C.F.R. § 63.162(c), § 63.163(b)(1), § 63.163(b)(3), § 63.168(b), § 63.168(d), and § 63.169(a) are violations of Sections 112 and 114 of the Act.

194. Each of Respondent's violations of the corresponding MON MACT and the HON References in the Facility's Modified Title V Permits is a violation of the NJ Title V Operating Program and Title V of the Act.

Count 3 - Failures to maintain identification on 2 valves until re-monitored within first 3 months of repair and failure to re-monitor 1 valve within first 3 months after repair

195. Paragraphs 1-194 are repeated and re-alleged as if set forth fully herein.

196. Each of Respondent's failures to maintain identification on 2 valves (#503 & #693) until re-monitored within first 3 months of repair is a violation of § 63.162(f)(2).

197. Respondent's failure to re-monitor 1 valve (#693) within first 3 months after repair is a violation of 40 C.F.R. § 63.162(f)(3).

198. Each of Respondent's violations of 40 C.F.R. § 63.162(f)(2) and § 63.162(f)(3) are violations of Sections 112 and 114 of the Act.

199. Each of Respondent's violations of the corresponding MON MACT and the HON References in the Facility's Title V Permits is a violation of the NJ Title V Operating Program and Title V of the Act.

Count 4 – Failures to identify noncompliance with the HON in the HON periodic reports

200. Paragraphs 1-199 are repeated and re-alleged as if set forth fully herein.

201. Each of Respondent's failures to identify non-compliance with the HON in its 2008 and 2009 semi-annual HON periodic reports is a violation of 40 C.F.R. § 63.182(d) and 40 C.F.R. § 63.2520(e).

202. Each of Respondent's violations of 40 C.F.R. § 63.182(d) and 40 C.F.R. § 63.2520(e) is a violation of Sections 112 and 114 of the Act.

203. Each of Respondent's violations of the corresponding MON MACT and the HON References in the Facility's Modified Title V Permits is a violation of the NJ Title V Operating Program and Title V of the Act.

Count 5 – Failures to identify noncompliance in the title V Annual Compliance Certifications

204. Paragraphs 1-203 are repeated and re-alleged as if set forth fully herein.

205. Each of Respondent's failure to identify non-compliance and certify non-compliance with the HON in its title V annual compliance certifications for calendar years 2008 and 2009 is a violation of N.J.A.C. 7:27-22.19(f) and the Facility's Title V Permit, Reference #7 of "Subject Item: FC.

206. Each of Respondent's violations of N.J.A.C. 7:27-22.19(f) is a violation of Sections 114, 502, and 503(b)(2) of the Act.

207. Each of Respondent's violations of Reference #7 of "Subject Item: FC" of the Facility's Title V Permit is a violation of the NJ Title V Operating Program and Title V of the Act.

PROPOSED CIVIL PENALTY

EPA's CAA Penalty Authority and Overview of CAA Penalty Policy

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to $25,000 per day for each violation of the Act. The Debt Collection Irnprovernent Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, and January 7, 2009, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the rnaximum civil penalty per day should be adjusted up to $27,500 for violations that occurred from January 30, 1997 through March 15, 2004, up to $32,500 for violations that occurred after March 15, 2004 through January 12, 2009 and up to $37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations that occurred on or after January 30, 1997, further adjusted 17.23% for violations that occurred March 15, 2004 through January 12, 2009, for a total of 28.95% and further adjusted an additional 9.83% for violations that occurred after January 12, 2009, for a total of 41.63%.

In determining the amount of penalty to be assessed, § 113(e) of the Act requires that the Administrator consider 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 as established by any credible evidence, the 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. EPA considered these factors and proposes a total penalty, for the violations alleged in this Complaint, of **$213,848**.

Respondents' violations alleged in Counts 1 through 5 result in Respondent being subject to the assessment of administrative penalties pursuant to § 113(d) of the Act. The proposed penalty has been prepared in accordance with the criteria in § 113(e) of the Act, and in accordance with the guidelines set forth in EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy). The CAA Penalty Policy sets forth EPA's guidelines concerning the application of the factors to be considered, under § 113(e) of the CAA, in proposing the penalty.

Below are short narratives explaining the reasoning behind the penalties proposed in this Complaint, along with the reasoning behind various general penalty factors and adjustments that were used in the calculation of the total penalty amount.

Gravity Based Penalties

Count 1: Violations of 40 C.F.R. § 63.180(b)(1), as specified in 40 C.F.R. Part 60, Appendix A, Method 21 and the corresponding References in the Facility's Modified Title V Permits.

The CAA Penalty Policy directs that a penalty of $5,000 be proposed for performing a required test method using an incorrect procedure. In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The violations alleged in this Count persisted for 3 months. The CAA

Penalty Policy directs that a penalty of $8,000 be proposed for violations that persist for 3 months. The $13,000 penalty was adjusted 30% for the violations of the title V References, which included 40 C.F.R. § 63.182(b)(1) as an applicable requirement, resulting in a proposed penalty, unadjusted for inflation, of $16,900.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. The alleged violations occurred from May 2008 through August 2008. Therefore, EPA proposes a $4,893 inflationary adjustment. The total proposed penalty for the violations alleged in Count 1 is $21,793.

Count 2: Violations of 40 C.F.R. § 63.162(c), § 63.163(b)(1), § 63.163(b)(3), § 63.168(b), § 63.168(d), § 63.169(a), and the corresponding References in the Facility's Modified Title V Permits.

The CAA Penalty Policy directs that a penalty of $5,000 be proposed for late installation of required monitoring equipment and also directs that a penalty of $15,000 be proposed for failure to use an instrument, or toxic vapor analyzer, in order to conduct the required testing methods for leaks. The Count alleges that Respondent failed to timely identify 153 components, which led to the failure to its failure to monitor the components. Because one type of violation led to the other type of violation and because the percentage of components not identified at the facility was small, EPA is proposing a penalty of $5,000 for the combined violations. In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The violations alleged in this Count persisted for 3 months. The CAA Penalty Policy directs that a penalty of $8,000 be proposed for violations that persist for 3 months. The $13,000 penalty was adjusted 30% for the violations of the title V

References, which included the 40 C.F.R. § 63.162(c), § 63.163(b)(1), § 63.163(b)(3), § 63.168(b), § 63.168(d), § 63.169(a) as applicable requirements, resulting in a proposed penalty, unadjusted for inflation, of $16,900.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. The alleged violations occurred from May 2008 through August 2008. Therefore, EPA proposes a $4,893 inflationary adjustment. The total proposed penalty for the violations alleged in Count 2 is $21,793.

Count 3: Violations of 40 C.F.R. § 63.162(f)(2), § 63.162(f)(3), and the corresponding References in the Facility's Modified Title V Permits.

The CAA Penalty Policy directs that a penalty between $10,000 and $15,000 be proposed for a failure to perform a work practice requirement. This Count alleges failures to maintain identification of 2 valves by leaving on a tag until the 2 valves are re-monitored within the first 3 months after a repair and a failure to re-monitor 1 valve within the time provided. There are several factors that EPA considered in proposing a penalty for this violation. Among these are: a) one of the violations would likely not have occurred but for the other violation; b) this violation involves only 2 of 278 valves at the Facility; c) the valve that was not re-monitored within 3 months was re-monitored within 11 months and was found to be not leaking. Given these circumstances, EPA exercises the discretion provided by the CAA General Penalty Policy and proposes a $2,500 penalty for these violations. In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The violation alleged in this Count persisted for a total of 11 months. The CAA Penalty Policy

directs that a penalty of $15,000 be proposed for a violation that persisted between 7-12 months. The $17,500 penalty was adjusted 30% for the violation of the title V References, which included 40 C.F.R. § 63.162(f)(2) and § 63.162(f)(3) as applicable requirements, resulting in a proposed penalty, unadjusted for inflation, of $22,750.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. The alleged violations occurred during May 19, 2009 through April 7, 2010. Therefore, EPA proposes a $9,471 inflationary adjustment. The total proposed penalty for the violation alleged in Count 3 is $32,221.

Count 4: Violations of 40 C.F.R. § 63.182(d), § 63.2520(e), and the References in the corresponding Facility's Modified Title V Permits.

The CAA Penalty Policy directs that a penalty between $5,000 and $15,000 be proposed for incomplete reports. This Count alleges failures to identify non-compliance with the HON in its 2008 and 2009 semi-annual HON periodic reports. EPA determined that the violations not identified in the reports accounted for a small percentage of information that was required to be included in each of the reports, therefore it proposes $5,000 for each incomplete report. The $10,000 penalty was adjusted 30% for the violation of the title V References, which included 40 C.F.R. § 63.182(d) and § 63.2520(e) as applicable requirements, resulting in a proposed penalty, unadjusted for inflation, of $13,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009 and

41.63% for violations occurring after January 12, 2009. The alleged violations occurred from December 2008 through December 2009. Therefore, EPA proposes a $4,588 inflationary adjustment. The total proposed penalty for the violations alleged in Count 4 is $17,588.

Count 5: Violations of § 503 of the Act and Reference #7 of "Subject Item: FC" in the Facility's Initial and Modified Title V Perrnits.

The CAA Penalty Policy provides a $5,000 to $15,000 penalty for an incomplete report or notice. This Count alleges that Respondent did not identify violations of the MON MACT and the HON requirements in the title V Annual Compliance Certifications for 2008 and 2009. EPA determined that the violations not identified in the certifications accounted for a small percentage of information that was required to be included in each of the certifications, therefore it proposes $5,000 for each incomplete certification. EPA proposes an unaggravated and unadjusted gravity component penalty for these violations of $10,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. Therefore, EPA proposes a $4,163 inflationary adjustment, which reflects the inflation adjustments for violations that occurred during this period of time. The total proposed penalty for the violations alleged in Count 5 is $13,529.

Title V Adjustment

The CAA Penalty Policy allows for an upward adjustment, by as much as 100%, of the gravity component, for degree of willfulness or negligence and directs that EPA

consider, among other things, the extent to which the violator in fact knew of the legal requirements that were violated. It is the Region's practice to upwardly adjust by 30% the gravity component of the proposed penalty for violations of conditions other than those that are solely required by and/or under title V. It does so because the violator's knowledge of the regulatory requirements is further enhanced through the application and permitting process. In this instance, Respondent included its obligation to comply with the MON MACT and the HON regulations in its title V application and was further put on notice of the requirements in its Modified Title V Permits, which included the MON MACT and the HON effective May 10, 2008. The Title V Permits were in effect throughout the entire period of time in which the violations alleged of the MON MACT and the HON occurred. In accordance with this practice, EPA upwardly adjusted by 30% the proposed gravity component for all violations it alleged in this matter, with the exception of the title V annual certification violations, which are only violations of the Title V requirements.

Size of Violator

The CAA Penalty Policy directs that a penalty be proposed that takes into account the size of violator determined by the violator's net worth for corporations or net current assets for partnerships. In this matter, the company's Form 10-K for 2010 indicates that Ferro's net worth is approximately $584,000,000. The CAA Penalty Policy directs that a penalty for a net worth over $100 million be proposed as follows: $70,000 plus $25,000 for every additional $30 million or fraction thereof. The size of violator penalty in this case, therefore, could have been $495,000. However, in accordance with the CAA General Penalty Policy, the region exercised its discretion and

reduced the SOV penalty to 50% of the total preliminary deterrence amount, which is $106,924. The SOV component of the penalty may be further adjusted should information be discovered that indicates the Respondent's net worth is less than estimated or if the preliminary deterrence amount is adjusted.

Economic Benefit

In addition to the gravity component of the proposed penalties, the CAA Penalty Policy directs that EPA determine the economic benefit derived from noncompliance. The CAA Penalty Policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. The CAA Penalty Policy indicates that it is EPA's goal to collect the violator's economic benefit and that EPA may elect not to assess an economic benefit component in enforcement actions where the violator's economic benefit is less than $5,000.

In this case, the Region determined the cost avoided was *de minimus*. Therefore, EPA did not assess an economic benefit component.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.* The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your

right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

Kara E. Murphy
Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a

defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Kara E. Murphy, at (212) 637-3211 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

Payment of Penalty in lieu of Answer, Hearing and/or Settlement

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check

payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) which appear on the first page of this Complaint. The check must be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St Louis, MO 63197-9000

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: SEPTEMBER 23, 2011

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

To: James F. Kirsch
Chairman, President and CEO
Ferro Corporation
Headquarters
1000 Lakeside Avenue
Cleveland, OH 44114-7000

cc: Karl P. Kriger, Plant Manager
Ferro Corporation
170 U.S. Route 130 South
P.O. Box 309
Bridgeport, NJ 08014

Edward Choromanski, Administrator
Air Compliance & Enforcement, NJDEP
P.O. Box 422
Trenton, NJ 08625

Richelle Wormley, Regional Enforcement Officer
NJDEP Southern Enforcement Office
One Port Center
2 Riverside Drive, Suite 201
Camden, NJ 08102

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 23 2011

CERTIFIED MAIL – RETURN RECEIPT

James F. Kirsch
Chairman, President and CEO
Ferro Corporation
Headquarters
1000 Lakeside Avenue
Cleveland, OH 44114-7000

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING**
In the matter of: Ferro Corporation, CAA-02-2011-1217

Dear Mr. Kirsch:

Enclosed herewith is a copy of the above-referenced COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING (Complaint) directed to you on behalf of Ferro Corporation, which is being filed for the purpose of proposing a penalty pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401 et seq., § 7413(d). The Complaint alleges violations of Sections 112, 114 and Title V of the Act. The total amount of the penalty proposed is $213,848.

I direct your attention to the section of the Complaint entitled, "NOTICE OF OPPORTUNITY FOR A HEARING." If you wish to contest any of the allegations of the Complaint or the amount of the proposed penalty, you must do so within the time specified in the notice or you may lose the opportunity for a hearing. You must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or EPA may file a motion for default judgment. If the motion is granted, the proposed penalty will become due and payable thirty (30) days after a final order. A copy of the procedural rules is enclosed for reference.

Counsel designated to appear on behalf of the Complainant in this matter is Kara E. Murphy, who can be reached at (212) 637-3211 or by mail at the address listed below. I call your attention to the section of the Complaint entitled, "SETTLEMENT CONFERENCE." EPA is prepared to begin to pursue settlement of this matter immediately and I encourage you or your attorney, if you are represented, to contact EPA counsel regardless of whether you are interested in contesting this matter.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

✓ 40 C.F.R. Part 22, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits.

✓ Clean Air Act Stationary Source Civil Penalty Policy

cc: Regional Hearing Clerk (With: Original Complaint with Certificate of Service and one copy of Complaint with Certificate of Service):

Karen Maples
Regional Hearing Clerk
United States Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007-1866

Counsel on behalf of EPA:

Kara E. Murphy
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007-1866

cc: Karl P. Kriger, Plant Manager
Ferro Corporation
170 U.S. Route 130 South
P.O. Box 309
Bridgeport, NJ 08014

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing the docket number CAA-02-2011-1217, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by UPS, to:

James F. Kirsch
Chairman, President and CEO
Ferro Corporation
Headquarters
1000 Lakeside Avenue
Cleveland, OH 44114-7000

I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: 9/26/11
New York, New York

Katherine Zuckerman
Air Branch Secretary