UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

BY HAND

September 28, 2012

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

Re: In the Connecticut Freezers, Inc. and Maritime International, Inc., EPA Docket Numbers: EPA Docket Numbers: CAA-01-2012-0106, CERCLA-01-2012-0107, and EPCRA-01-2012-0108

Dear Ms. Santiago:

Please file the enclosed Complaint and Notice of Opportunity for Hearing in the above-mentioned matter. I have also enclosed the accompanying Certificate of Service for filing, and an extra copy of each document. Thank you for your assistance in this matter.

Sincerely,

Catherine Smith
Senior Enforcement Counsel

Enclosures

cc: David Weschler
Robert Curry, Esq.

In Re: Connecticut Freezers, Inc. and Maritime International, Inc.
EPA Docket Numbers: CAA-01-2012-0106, CERCLA-01-2012-0107, and EPCRA-01-2012-0108

CERTIFICATE OF SERVICE

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

Original and one copy, hand-delivered:

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

One copy of complaint, via certified mail, return receipt requested

David Weschsler
President
Maritime International, Inc. and
Connecticut Freezers, Inc.
P.O. Box 7745
Whaler's Wharf
New Bedford, MA 02742

Robert W. Curry, Partner
Edwards Wildman Palmer LLP
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Dated: September 28, 2012

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:	
Connecticut Freezers, Inc. and Maritime International, Inc.	**Docket Numbers CAA-01-2012-0106 CERCLA-01-2012-0107 EPCRA-01-2012-0108**
1 Brewery Street New Haven, CT	
Respondents.	**COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**
Proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d); Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9609(b); and Section 325(b) of the Emergency Planning and Community-Right-to-Know Act, 42 U.S.C. § 11045(b)	

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency ("EPA") issues this administrative Complaint and Notice of Opportunity for Hearing ("Complaint") pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d); Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609(b); and Section 325(b) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(b) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter "EPCRA"). The Complainant is the Director of the Office of Environmental Stewardship, EPA Region 1.

2. The Complaint notifies Respondents, Maritime International, Inc. and Connecticut Freezers, Inc. ("Respondents"), that EPA intends to assess penalties for Respondents' failure to:

(a) comply with the requirements of the "General Duty Clause" of Clean Air Act Section 112(r)(1), 42 U.S.C. § 7412(r)(1), with regard to preventing a May 25, 2011 release of ammonia from a cold storage warehouse in New Haven, Connecticut;

(b) timely report the May 25, 2011 release of ammonia to the National Response Center, in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a); and

(c) submit a timely follow-up notice to emergency responders following the May 25, 2011 release, in violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

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

II. APPLICABLE STATUTES AND REGULATIONS

CAA Statutory Authority

4. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as Section 654 of Title 29 (29 U.S.C. § 654) to: (a) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize

the consequences of accidental releases that do occur. This section of the CAA is referred to as the "General Duty Clause."

5. The list of "extremely hazardous substances" in Section 112(r)(3) includes anhydrous ammonia.

6. The term "accidental release" is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

7. The term "stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

8. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CERCLA Statutory and Regulatory Authority

9. Section 103(a) of CERCLA requires that any person in charge of an onshore facility report the non-permitted release of a hazardous substance from the facility to the National Response Center as soon as that person has knowledge of such a release in an amount equal to or greater than the reportable quantity, as determined pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602.

10. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to, among other things, promulgate regulations establishing the reportable quantities of any hazardous substance.

11. EPA promulgated the federal regulations known as the CERCLA Notification Rules, 40 C.F.R. Part 302, to implement Sections 102 and 103 of CERCLA. These regulations designate the hazardous substances subject to notification requirements, identify the reportable quantities for those substances, and set forth the notification requirements for those substances.

12. Forty C.F.R. § 302.6 requires, among other things, that any person in charge of an onshore facility report the non-permitted release of a hazardous substance from the facility to the National Response Center as soon as that person has knowledge of such a release in an amount equal to or greater than the reportable quantity.

13. Sections 109(a) and (b) of CERCLA, 42 U.S.C. §§ 9609(a) and (b), provide for the assessment of penalties for violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a.)

EPCRA Statutory and Regulatory Authority

14. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), requires the owner or operator of a facility to immediately notify the local emergency planning committee ("LEPC") and the state emergency planning commission ("SERC") of a release of an extremely hazardous substance in an amount at or above the reportable quantity. If such release requires a notification under Section 103(a) of CERCLA, the owner of the operator of the facility must immediately provide notice as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b).

15. Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), specifies the required content of the notice required by EPCRA Section 304(a) (the "Section 304(a) Notice"), including the chemical involved in the release; an estimate of the quantity released; the time and duration of the release; the medium into which the release occurred; health risks associated with the emergency; proper precautions to take as a result of the release; and the name and telephone number of a person who may be contacted for further information.

16. In addition, Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires a written follow-up notice as soon as practicable after a release requiring a Section 304(a) Notice. This follow-up notice must update the Section 304(a) Notice and include additional information with respect to actions taken to respond to the release; known health risks associated with the release; and advice regarding medical attention necessary for exposed individuals.

17. Section 328 of EPCRA, 42 U.S.C. § 11048, authorizes EPA to promulgate regulations to implement EPCRA.

18. The regulations promulgated to implement EPCRA Section 304 are found at 40 C.F.R. Part 355, Subpart C. Such regulations require immediate notification to the LEPC and the SERC of a release of an extremely hazardous substance or CERCLA hazardous substance above the reportable quantity designated in Appendix A to Part 355. The regulations also require a written follow-up notice as soon as practicable.

19. Sections 325(b)(1) and (2) of EPCRA, 42 U.S.C. §§ 11045(b)(1) and (2), provide for the assessment of penalties for each violation of EPCRA Section 304, 42 U.S.C. § 11004.

III. FACTUAL ALLEGATIONS

20. At the time relevant to the violations alleged herein, Respondent, Connecticut Freezers, Inc. owned and operated a cold storage warehouse at 1 Brewery Street in New Haven, Connecticut (the "Facility"),

21. The Facility is located near Interstate Route 95, a railway line, a post office, and other businesses, including an IKEA store.

22. Respondent, Connecticut Freezers, Inc. is a domestic corporation registered in Connecticut with a principal address in New Bedford, Massachusetts.

23. Likewise, at the time relevant to the violations alleged herein, Maritime International, Inc. operated the Facility.

24. Maritime International, Inc. is the parent of Connecticut Freezers, Inc., and Maritime International, Inc. personnel were in charge of refrigerator maintenance and aspects of health and safety compliance at the Facility.

25. Maritime International, Inc. is a foreign corporation organized under the laws of Rhode Island, with its principal office located in New Bedford, Massachusetts.

26. As corporations, each Respondent is a "person" within the meaning of:

(a) Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e);

(b) Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. § 302.3;

(c) Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 355.61.

27. At the time relevant to the violations alleged herein, the Facility's refrigeration system used and stored approximately 5,075 pounds of anhydrous ammonia.

28. As indicated in paragraph 5 above, anhydrous ammonia is an "extremely hazardous substance" subject to the General Duty Clause. It is also an "extremely hazardous substance" subject to reporting under EPCRA Section 304, 42 U.S.C. § 11004, and a "hazardous substance" subject to reporting under CERCLA Section 103(a), 42 U.S.C. § 9603(a).

29. The Facility's ammonia refrigeration system was installed in 1965, and Respondent, Connecticut Freezers, Inc. acquired the Facility in the early 1990s.

30. On May 25, 2011, an anhydrous ammonia release occurred at the Facility, releasing approximately 5,000 pounds of ammonia (the "Incident" or "Release").

31. On May 25, 2011, at approximately 8:00 p.m., customers from a nearby IKEA store reported a strong odor and called 911. Fire department personnel responding to the call

noticed a white vapor cloud billowing up from under the Facility. The emergency responders evacuated several thousand people in nearby establishments, such as the IKEA store, an Amtrak maintenance facility, and a night club.

32. The New Haven Fire Department contacted the Facility's warehouse manager upon arrival at the scene, as no employees were present at the time of the Release. That manager, in turn, notified the Facility's refrigeration technician.

33. Respondents did not immediately call the National Response Center upon learning of the release.

34. The Incident was declared over at approximately 10:45 a.m. on May 26, 2011. That afternoon, the New Haven Fire Department and the Connecticut Department of Environmental Protection gave approval to Respondents to recharge the ammonia refrigeration system, and the fire department allowed the Facility to resume operating on May 27, 2011.

35. A follow-up accident report indicated that the Release occurred from a leak in a pipe that ran through a crawl space under the building. This pipe line was pressurized back to the System's receiver vessel. An electronic mail message sent to EPA on December 14, 2011, indicated that the leak occurred after bracket supports holding a pipe coupling came loose. Also, a consultant for Respondents' insurer concluded that the pipe leak was due to corrosion of the piping and hangers.

36. On May 31, 2011, Respondents had the source of the Release isolated, cut, and capped.

37. On June 21, 2011, EPA inspectors visited the Facility to investigate the accident and assess Respondents' compliance with Section 112(r) of the Clean Air Act, EPCRA, and CERCLA Section 103 ("EPA's Inspection").

38. Also on June 21, 2011, approximately 27 days after the Release, Respondents notified the National Response Center of the Incident.

39. On June 27, 2011, Respondent, Maritime International, Inc., transmitted the follow-up accident report referenced in paragraph 35 to EPA, 32 days after the Release. The New Haven LEPC and SERC received the same report on July 19, 2011, approximately 53 days after the Release ended.

40. On June 28, 2011, EPA issued a list of follow-up questions, which Respondent, Maritime International, Inc. answered on July 26, 2011.

41. Among other things, EPA's Inspection and a review of information submitted to EPA revealed that, at the time of the Incident, Respondents:

a. did not have critical information about the components of the ammonia refrigeration system ("System") that would allow Respondents to adequately maintain and inspect the System's equipment. For example, Respondents had no refrigeration flow diagrams; information about safe operating parameters; manufacturer's information and recommendations about the equipment in the System; or information about the codes or standards that applied to the system;

b. did not have maintenance information or a maintenance protocol for key components of the System, such as pressure relief valves, ammonia detectors, and piping;

c. were not employing a comprehensive preventative maintenance program that covered all System components, including the piping from which the Release occurred.

d. did not have information about the life expectancy of the piping (or other refrigeration components), although the Facility's own Integrated Contingency Plan referenced that piping should be replaced and/or reconditioned at the end of its life expectancy;

e. did not have labels or markings to identify refrigeration system components;

f. did not have set points or calibration information available to maintain or test ammonia sensors;

g. had never obtained an independent audit of the System; and

h. had not conducted a hazard analysis of the System, using appropriate hazard assessment techniques.

42. On December 30, 2011, EPA issued a Notice of Violation, Administrative Order and Reporting Requirement("NOV/AO/RR") to Respondents pursuant to CAA Section 113(a), 42 U.S.C. § 7413(a). Among other things, the NOV/AO/RR required Respondents to comply with the General Duty Clause at the Facility. It also required Respondents to provide hazard analyses conducted in accordance with Section 112(r) of the CAA for three other ammonia refrigeration systems in East Hartford, Connecticut, and New Bedford, Massachusetts (the "East Hartford and New Bedford Facilities").

43. Respondents complied with all of the NOV/AO/RR requirements.

44. Furthermore, Respondents ceased refrigeration operations at the Facility on March 30, 2012.

45. On August 23, 2012, EPA entered into a Finding of Violation and Administrative Order on Consent ("AOC") with Maritime International, Inc. and three subsidiaries, to bring the three East Hartford and New Bedford Facilities into compliance with

the General Duty Clause. The AOC requires assessment of the East Hartford and New Bedford Facilities by a refrigeration expert and implementation of the expert's recommendations.

46. As a result of EPA's Inspection and review of information provided by Respondents, EPA alleges the following violations:

IV. COUNTS

A. Count I: Failure to Identify Hazards in Violation of the CAA's General Duty Clause

47. The allegations in Paragraphs 1 through 46 are hereby realleged and incorporated herein by reference.

48. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances have a general duty to identify hazards which may result from accidental releases of such substances, using appropriate hazard assessment techniques.

49. The Facility is a "stationary source," as defined by Section 112(r)(2) of the CAA, 42 U.S.C. § 7412(r)(2).

50. As alleged above in paragraphs 20 and 23, Respondents own and/or operate the stationary source.

51. As alleged above in paragraph 5, anhydrous ammonia is an extremely hazardous substance as defined by Sections 112(r)(1) and (2) of the CAA, 42 U.S.C. § 7412(r)(1) and (2).

52. As alleged above in paragraph 27, the Facility stored anhydrous ammonia in its refrigeration system.

53. The May 25, 2011 Incident was an accidental release into the ambient air, within the meaning of Section 112(r)(2) of the CAA, 42 U.S.C. § 7412(r)(2).

54. EPA's inspection revealed that Respondents had not identified the piping referenced in paragraphs 35 and 41(d) from which the Release occurred as being a potential source from which ammonia could be released (or as part of the System that needed to be maintained).

55. Also, at the time of the Release, Respondents had not conducted a hazard analysis of the System, using industry-recognized hazard assessment techniques.

56. The recommended industry practice and standard of care for indentifying, analyzing, and evaluating potential hazards associated with ammonia refrigeration systems of this size would be to use standard, industry-developed checklists or a "what-if" methodology.

57. By failing to conduct a hazard analysis of the System and by failing to adequately identify the potential hazards associated with the piping referenced in paragraphs 35 and 41(d), Respondents failed to identify hazards, using appropriate hazard assessment techniques, as required by the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

B. Count II: Failure to Design and Maintain a Safe Facility in Violation of the CAA's General Duty Clause

58. The allegations in Paragraphs 1 through 57 are hereby realleged and incorporated herein by reference.

59. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), in addition to their duty to identify hazards, owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances have a

general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

Lack of Refrigeration System Documentation

60. As described in Paragraph 41(a) and (d) above, Respondents did not have critical information about the components of the System that would allow Respondents to adequately maintain and inspect the System equipment. For example, Respondents had no refrigeration flow diagrams; information about safe operating parameters; manufacturer's information and recommendations about the equipment; information about the life expectancy of the piping; or information about the codes or standards that applied to the System.

61. The recommended industry practice and standard of care for ammonia refrigeration systems of this size would be to maintain refrigeration system documentation, such as refrigeration flow drawings, equipment lists, and manufacturer's information, to help facility personnel identify hazards posed by the system and maintain the system. See, for example, the International Institute of Ammonia Refrigeration's ("IIAR") *Ammonia Refrigeration Management Program*, Section 3; IIAR Bulletin No. 109, *IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System,* Section 4; and IIAR Bulletin 110, *Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigeration Systems,* Section 4.

Lack of Comprehensive Preventative Maintenance Program

62. As described in paragraph 41(b) above, Respondents did not have maintenance information or protocols for key components of the refrigeration system, such as pressure relief valves, ammonia detectors, and piping.

63. Nor were Respondents employing a comprehensive preventative maintenance program that covered all system components, including the piping from which the Release occurred, as described in paragraph 41(c).

64. Also, as described in paragraph 41(g), Respondents had never obtained an independent audit or inspection of the System.

65. Finally, as described in paragraph 41(f), Respondents did not have set points or calibration information available to maintain or test ammonia sensors.

66. The recommended industry practice and standard of care for ammonia refrigeration systems of this size would be to employ and document a preventative maintenance program, after identifying all the equipment that is critical to safely operate the System and determining what tests and inspections should be used to maintain equipment. See, for example, IIAR's *Ammonia Refrigeration Management Program*, Section 5 and Appendix 5.1; IIAR Bulletin 110 *Startup, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems,* Section 6; and IIAR Bulletin No. 109, *IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System,* Section 4.7.4.

Inadequately Labeled System Components

67. As described above in paragraph 41(e), at the time of the Incident, Respondents did not have labels or markings on many of the System components to identify them.

68. The recommended industry practice and standard of care for ammonia refrigeration systems of this size would be to label system components. See, for example, the IIAR's *Ammonia Refrigeration Management Program*, Section 4.2; IIAR Bulletin No. 109, *IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System;* and IIAR Bulletin No. 114, *Identification of Ammonia Refrigeration Piping and System Components.*

69. Accordingly, by failing to have (a) appropriate refrigeration system documentation; (b) an adequate preventative maintenance program; and (c) labeled System components, as described in paragraphs 60 through 68 above, Respondents failed to design and maintain a safe facility, as required by the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

C. Count III: Failure to Notify the NRC of a Release in Violation of CERCLA

70. Complainant realleges and incorporates by reference paragraphs 1 through 69.

71. Section 103(a) of CERCLA, 42 U.S.C. 9603(a), and 40 C.F.R. § 302.6(a) require a person in charge of an onshore facility to immediately notify the National Response Center as soon as he has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in an amount equal to or greater than the reportable quantity of that substance.

72. As alleged above, each Respondent is a "person," as defined at Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. § 302.3.

73. The Facility is an "onshore facility," as defined at Section 101(18) of CERCLA, 42 U.S.C. § 9601(18), and 40 C.F.R. § 302.3.

74. At the time of the Release, each Respondent was "in charge of" the onshore facility.

75. Ammonia is a "hazardous substance," as defined at Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3.

76. Pursuant to 40 C.F.R. § 302.4, the reportable quantity for an ammonia release is 100 pounds, as determined in any 24-hour period.

77. The Incident on May 25, 2011 was a "release" into the environment, as defined at Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and 40 C.F.R. § 302.3.

78. The release of approximately 5,000 pounds of anhydrous ammonia from the Facility during the Release exceeded the reportable quantity.

79. The Release was not a "federally-permitted release," as defined at Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

80. Accordingly, Respondents were required to immediately notify the National Response Center as soon as Respondents knew that the amount of anhydrous ammonia released exceeded the reportable quantity.

81. Respondents knew or should have known that the Release exceeded the reportable quantity immediately upon learning of the Release on May 25, 2011 or shortly thereafter.

82. Respondents did not notify the National Response Center of the Release until the day of EPA's Inspection, approximately 27 days after the Release occurred.

83. Accordingly, Respondents' failure to immediately notify the National Response Center as soon as it had knowledge that the Release at the Facility exceeded the reportable quantity violated Section 103(a) of CERCLA and 40 C.F.R. § 302.6(a).

D. Count IV: Failure to Provide a Timely Written Follow-up Notice to the LEPC and SERC in Violation of EPCRA

84. Paragraphs 1 through 83 are incorporated herein by reference as if fully set forth below.

85. In accordance with Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C, an owner or operator of a facility from which a release of

extremely hazardous substance occurs that requires a notification under Section 103(a) of CERCLA, shall provide immediate notice to the LEPC for any area likely to be affected by the release and to the SERC of any State likely to be affected by the release.

86. In accordance with Section 304(b)(2) of EPCRA, 42 U.S.C. § 11004(b)(2), and 40 C.F.R. § 355.40(a), notice requirements include (a) the chemical name or identity of any substance involved in the release, (b) an indication of whether the substance is an extremely hazardous substance, (c) an estimate of the quantity of the extremely hazardous substance released into the environment, (d) the time and duration of the release, (e) the media into which the release occurred, (f) any known or anticipated acute or chronic health risks associated with the emergency and where appropriate, advice regarding medical attention necessary for exposed individuals, (g) proper precautions to take as a result of the release, including evacuation, and (h) the name and telephone number of the person or persons to be contacted for further information.

87. Pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 40 C.F.R. § 355.40(b), the owner or operator of a facility where a release occurs that requires notice pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C, shall provide a written follow-up emergency notice ("Follow-up Notice") as soon as practicable after the release, setting forth and updating the information required by the initial notification and including additional information with respect to actions taken to respond to and contain the release, any known or anticipated acute or chronic health risks associated with the release, and where appropriate, advice regarding medical attention necessary for exposed individuals.

88. Respondents are each the owner or operator of a "facility," as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61.

89. The Facility is one at which "an extremely hazardous substance," ammonia, was stored, as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 355.61.

90. The Incident on May 25, 2011 was a "release," as defined by Section 329(8) of EPCRA, 42 U.S.C. § 11049(8), and 40 C.F.R. § 355.61.

91. The reportable quantity for a release of ammonia is 100 pounds, pursuant to the reportable quantity listed in the CERCLA regulations at 40 C.F.R. Part 302, Table 302.4, and the reportable quantity listed in the EPCRA regulations at 40 C.F.R. Part 355, Appendices A and B.

92. The Release exceeded the reportable quantity for ammonia, as set forth at 40 C.F.R. § 302.4 and Part 355, Appendices A and B, within a 24-hour period, therefore requiring immediate notification to the SERC and LEPC, in compliance with Sections 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C.

93. Defendants did not provide the Follow-up Notice required by EPCRA Section 304(c) and 40 C.F.R. § 355.40(b) to the SERC and LEPC until approximately July 19, 2011, at least 53 days after the Release.

94. EPA guidance has set forth the interpretation that "as soon as practicable" means that a Follow-up Notice should be provided within thirty days from the release (the "30-day Period"). 75 Fed. Reg. 39852, 39857 (July 14, 2010).

95. Respondents provided the Follow-up Notice to the LEP and SERC 53 days after the Release, which was not "as soon as practicable." Accordingly, Respondents provided a late Follow-up Notice to the LEPC and SERC.

96. Respondents' failure to timely provide the Follow-up Notice to the SERC and LEPC violated Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b).

V. PROPOSED CIVIL PENALTY

97. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and 7413(d), as amended, authorize EPA to assess a civil penalty of up to $25,000 per day of violation for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between January 30, 1997 and March 15, 2004 are subject to up to $27,500 per day of violation; violations that occurred between March 15, 2004 and January 12, 2009 are subject to up to $32,500 per day of violation; and violations that occurred thereafter are subject to up to $37,500 per day of violation.

98. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted for inflation by the DCIA and 40 C.F.R. Part 19, prescribes a $295,000 penalty limit and a twelve-month duration limitation on EPA's authority to initiate an Administrative Penalty Order. However, these limitations may be waived where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty or a longer period of violation is appropriate for an administrative penalty action. EPA and the Department of Justice jointly have determined that an administrative penalty action is appropriate in this case.

99. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b) authorizes EPA to assess a "Class II" civil penalty of up to $25,000 per day of violation for violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between January 30, 1997 and March 15, 2004 are subject to up to

$27,500 per day of violation; violations that occurred between March 15, 2004 and January 12, 2009 are subject to up to $32,500 per day of violation; and violations that occurred thereafter are subject to up to $37,500 per day of violation.

100. Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorizes EPA to assess a civil penalty of up to $25,000 per day of violation for violations of Section 304 of EPCRA, 42 U.S.C. 11004. Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between January 30, 1997 and March 15, 2004 are subject to up to $27,500 per day of violation; violations that occurred between March 15, 2004 and January 12, 2009 are subject to up to $32,500 per day of violation; and violations that occurred thereafter are subject to up to $37,500 per day of violation.

101. In light of the above-referenced findings, EPA seeks to assess civil penalties of up to $32,500 for CAA violations occurring between September 30, 2007 and January 12, 2009, and up to $37,500 per day for CAA, CERCLA, and EPCRA violations occurring after January 12, 2009, as follows:

CAA

(a) Up to four years and six months (approximately 1,641 days) of violation for Respondent's failure to comply with the General Duty Clause's requirement **to identify hazards**. For penalty purposes, the duration of the violation is from at least September 30, 2007 to March 30, 2012, when Respondents ceased refrigeration operations at the Facility. This violation is substantial because a hazard analysis helps facility personnel assess and manage the hazards that are posed by chemicals at a facility so that threats of releases are minimized. Indeed, a failure to identify the hazards posed by the piping at this facility resulted in the Release.

(b) Up to four years and six months (approximately 1,641 days) of violation for Respondent's failure to comply with the General Duty Clause's requirement to **design and maintain a safe facility**. For penalty purposes, the duration of the violation is from September 30, 2007 to March 30, 2012, when Respondents ceased refrigeration operations at the Facility. This violation is substantial because the failure to compile critical information about the equipment (for example, information about the expected life of piping and valves) means that the refrigeration system cannot be properly inspected and maintained. Likewise, the failure to conduct preventative maintenance on process equipment (for example, replacing corroded pipe before it fails), can – and did in this case -- lead to a release. In addition, the failure to adequately label system components can increase the chances for inadvertent releases and injuries and hamper the ability of emergency responders to address a release.

CERCLA

(b) Up to at least 27 days of violation for failing to report the Release to the NRC. For penalty purposes, the duration of the violation is from, at the latest, March 26, 2011, to June 21, 2011, when Respondents reported the Release to the NRC. This violation is substantial because failure to notify could seriously hamper federal and state response activities and pose serious threats to human health and the environment. The failure to notify also hampers the federal government's ability to promptly investigate the causes of a release, which can lead to safety improvements at that facility.

EPCRA

(c) Up to at least 23 days of violation for failing to timely provide the Follow-up Notice to the LEPC and SERC. The failure to file such report hampers the ability of emergency responders to understand whether a facility's response to a release has been adequate and

whether the health and environmental effects of a release have been properly mitigated. Moreover, the report often helps the facility, emergency responders, and regulatory agencies understand the cause of the release, which can lead to safety improvements.

102. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty and explaining how the proposed penalty was calculated, as required by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule," 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"), a copy of which is enclosed with this Complaint.

103. In determining the amount of the CAA penalty to be assessed, EPA will take into account the statutory factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e). These factors include 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, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require.

104. In determining the amount of the CERCLA penalty to be assessed, EPA will take into account the statutory factors listed in Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3). These factors include the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, history of prior violations, degree of culpability, cooperative attitude, any economic benefit or savings resulting from the violations, and other such factors as justice may require. EPA will consider these same factors when assessing penalties for violations of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

105. An appropriate penalty will be derived pursuant to the following penalty policies: (1) "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" (June 2012); and (2) "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act" (September 30, 1999), including updated penalty matrices that reflect inflation adjustments. Copies of these penalty policies are enclosed with this Complaint. These policies provide a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

106. Respondents have the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22. Any request for a hearing must be included in Respondents' written Answer(s) to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

107. In its Answer, a Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate (for example, due to a Respondent's inability to pay); or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which a Respondent has any knowledge. If a Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied.

The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts a Respondent intends to place at issue.

108. The original and one copy of the Answer, as well as a copy of all other documents which a Respondent files in this action, must be sent to:

Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, Massachusetts 02109-3912

109. A Respondent should also send a copy of the Answer, as well as a copy of all other documents that a Respondent files in this action, to Catherine S. Smith, the attorney assigned to represent EPA and who is designated to receive service in this matter, at:

Catherine S. Smith
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (OES-04-4)
Boston, Massachusetts 02109-3912
Tel: (617) 918-1777.

110. If a Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

VII. INFORMAL SETTLEMENT CONFERENCE

111. Whether or not a hearing is requested upon the filing of an Answer, Respondents may confer informally with EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondents with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter or the penalty. EPA has the authority to adjust the penalty, where

appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

112. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondents or their representative(s) should contact Catherine S. Smith, Senior Enforcement Counsel, at (617) 918-1777.

VIII. CONTINUED COMPLIANCE OBLIGATION

113. Neither assessment nor payment of an administrative penalty shall affect Respondents' continuing obligation to comply with environmental laws and regulations.

Susan Studlien Date: 09/26/12

Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1