

United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2019

February 18, 2016

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Subject: Brenntag Northeast, Inc., **Answer of Respondent**
First Amended Administrative Complaint
Docket No: RCRA-03-2015-0240 and CWA-03-2015-0240

Dear Judge Biro:

Pursuant to 40 C.F.R. 22.21(a) of the Consolidated Rules of Practice, I am today transmitting copies of Complaint and Notice of Opportunity for Hearing in the above captioned matter along with Respondent's Answer and Request for Hearing. Please assign an Administrative Law Judge to serve as Presiding Officer.

Sincerely yours,


Lydia A. Guy
Regional Hearing Clerk

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**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:	:	ANSWER & REQUEST FOR
	:	ADMINISTRATIVE HEARING
Brenntag Northeast, Inc.,	:	
	:	
Respondent,	:	Docket No. RCRA-03-2015-0240
	:	CWA-03-2015-0240
Brenntag Northeast, Inc.	:	
81 West Huller Lane	:	
Reading, PA 19605,	:	
	:	
Facility.	:	

**ANSWER OF RESPONDENT BRENNTAG NORTHEAST, INC.
TO FIRST AMENDED ADMINISTRATIVE COMPLAINT**

Brenntag Northeast, Inc. (“Brenntag”), by and through its undersigned counsel, files the following Answer to the *First Amended Complaint and Notice of Opportunity for Hearing* (the “Complaint”) served by the United States Environmental Protection Agency – Region III (“EPA”) on January 26, 2016. Brenntag also formally requests the opportunity for a hearing on the matter.

INTRODUCTION

This case involves allegations by EPA that in July 2014 the Brenntag facility located on Huller Lane in Reading, PA, violated federal statutory and regulatory requirements for the management of hazardous wastes (the “RCRA counts”) or in relation to spill prevention (the “CWA counts”).

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SPECIFIC RESPONSES TO EPA COMPLAINT

1. Paragraph 1 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

2. Brenntag does not have sufficient information in its possession to form an opinion as to the veracity of the allegations contained in Paragraph 2 and strict proof of delegated and properly exercised authority is demanded at the hearing in this matter.

3. Admitted.

4. Paragraph 4 states a legal conclusion to which no response is required. To the extent a response is required, it is admitted that Brenntag's chemical distribution facility is located 81 West Huller Lane in Reading, Pennsylvania 19605. However, it is specifically denied as set forth herein that Brenntag violated any rules or regulations that are the subject of the Complaint, and strict proof thereof is demanded at the hearing in this matter.

5. Admitted.

6. Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

7. Paragraph 7 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

8. Paragraph 8 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

9. Paragraph 9 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

10. Paragraph 10 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

11. Paragraph 11 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

12. Brenntag does not have sufficient information in its possession to form an opinion as to the veracity of the allegations contained in Paragraph 12 and strict proof thereof is demanded at the hearing in this matter. Brenntag also demands proof that the alleged e-mail notice satisfies applicable legal requirements related to State notice.

13. Paragraph 13 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may

not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

14. Paragraph 14 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

15. Paragraph 15 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

16. Paragraph 16 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

17. Paragraph 17 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

18. Paragraph 18 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

19. Paragraph 19 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

20. Admitted in part; denied in part. Brenntag admits that for at least the past 5 years, which it understands to be the relevant time period, it has owned and operated a chemical distribution facility at 81 W. Huller Lane, Reading, Berks County, PA. Brenntag does not believe operations into the 1970s by Textile Chemical Company, Inc., are relevant. The remainder of the paragraph, in particular, the allegation of corporate successorship, states a legal conclusion to which no response is required.

21. Admitted in part; denied as stated. It is admitted that the EPA conducted three inspections on July 29 and 30, 2014, and on May 20, 2015, at the facility located at 81 West Huller Lane, Reading, Pennsylvania (hereinafter, the "Facility"). However, on information and belief, the May 20, 2015 inspection was limited to SPCC issues reflected in the CWA counts.

22. Admitted as stated. However, it should be noted that EPA's information request was unduly oppressive, burdensome and overbroad. It requested a significant investigation by Brenntag personnel that could not reasonably be completed in the time provided, yet EPA arbitrarily and unreasonably refused Brenntag's request for an extension of time within which to respond.

23. Paragraph 23 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

24. No response required. To the extent a response is required, Brenntag incorporates by reference its prior responses.

25-37. Paragraphs 25–37 state legal conclusions to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

**COUNT I – OPERATION OF A TREATMENT, STORAGE
AND DISPOSAL FACILITY (“TSDF”) WITHOUT A PERMIT**

38. No response required. To the extent a response is required, Brenntag incorporates by reference its prior responses.

39. Paragraph 39 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

40. Brenntag does not have sufficient information in its possession to form an opinion as to the veracity of the allegations contained in Paragraph 40 and strict proof thereof is demanded at the hearing in this matter.

41. Denied as stated. On November 11, 1981, Stinnes-Textile Chemical Company, Inc., acquired Textile Chemical Company, Inc., and Textile Realty Company, Inc. On December 17, 1981, Stinnes-Textile Chemical Company, Inc. changed its name to Textile Chemical Company, Inc. On April 30, 2001, Textile Chemical Company, Inc., changed its name to Brenntag Northeast, Inc.

42. Admitted that the Accumulation Tanks each were used as 90-day storage tanks for hazardous waste. Wastes stored therein within the 90-days were managed in accordance with applicable law.

43. Admitted that each Accumulation Tank has a storage capacity of not more than 1,360 gallons; the remainder of Paragraph 43 is denied.

44. Denied. By way of further response and without waiving the foregoing general denial, it is admitted that the funnels are used in conjunction with “drip” buckets. The materials placed in the tanks are virgin products which at the time of the EPA inspection and for relevant times before that date, were being managed as RCRA hazardous wastes. However, both funnels had hinged metal plate closures which form an effective contact seal. On information and belief, the hinged plate closures were in place and the funnels closed at the time of the EPA inspection. The long-standing BMP is that the funnels are maintained in the closed position except during the loading of product materials. The Accumulation Tanks also are loaded directly from lines being flushed, through a 4” cap on the top of each tank. The cap also is kept closed except when in use.

45. Paragraph 45 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

46. Paragraph 46 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

47. Paragraph 47 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

48. Paragraph 48 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

49. Paragraph 49 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

50. Paragraph 50 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citation relevant to a disposition of this matter, speak for themselves.

51. Paragraph 51 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves. By way of further response and without prejudice to the foregoing, at all relevant times the two Accumulations Tanks (i) were kept continuously closed except during loading and unloading, (ii) were appropriately labeled, (iii) were serviced by personnel who were appropriately trained in their use, (iv) were being properly inspected on a daily basis, and (v) met applicable requirements of 40 C.F.R. Part 265, Subpart CC. The RCRA tote with the smeared label observed in a different area of the storage yard was (a) RCRA empty and (b) not in use at the time; consequently, it did not need to be labeled or have an accumulation date added.

52. Denied as stated. Without prejudice to the foregoing, Brenntag asserts that the Facility is a large warehouse and distribution complex that contains many materials, a very small percentage of which are solid wastes, and a smaller percentage of those are RCRA hazardous wastes. The fact that some of the facility's 90-day or satellite accumulation areas are in the vicinity of other product transfer operations is completely irrelevant, except to the extent it demonstrates confusion on the part of EPA regarding facility operations, and/or demonstrates agency bias, by improperly inferring that there is something inherently wrong with the management of relatively small volumes of hazardous waste in the vicinity of much larger volumes of chemical products in the Facility distribution areas, including the tank farm. In fact, it is entirely appropriate to accumulate waste in the designated locations precisely because they are (a) closely proximate to the operations that generate the wastes, and (b) within sophisticated and engineered containment systems.

53. Admitted, but it is denied that a permit was needed for 90-day accumulation.

54. Paragraph 54 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

55. Paragraph 55 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, Brenntag asserts the follows in response to the allegations of subparagraphs (a)–(d):

a. It is admitted that in-use containers in the lab (less than one-gallon in size) were not so labeled at the time of the inspection, but denied that they needed to be labeled at the time of the inspection. It also is denied that the containers contained *potassium fluoride*. No other solid or hazardous waste inspection by federal or state authorities has ever suggested that

labeling of such in-service containers in an active laboratory be so-labeled. Brenntag has since acquiesced to EPA's suggestion that they be so labeled.

b. Denied as stated. The drums were appropriately labeled and closed at the time of the inspection.

c. Denied as stated. The containers in question were in-use containers in an active work area and were merely used to transport materials in the process of being cleaned up into properly labeled waste containers in one of the Facility's designated 90-day accumulation areas or, in the case drip buckets used for acids/bases, would promptly have been neutralized (rendering the product in the pH neutral range), and properly managed thereafter.

d. Denied. It is admitted that the Facility personnel could not locate an engineering certification respecting the tanks but denied that the tanks do not meet appropriate and applicable engineering specifications.

56. Paragraph 56 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

57. Paragraph 57 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

COUNT II – FAILURE TO MAKE A HAZARDOUS WASTE DETERMINATION

58. No response required. To the extent a response is required, Brenntag incorporates by reference its prior responses.

59. Paragraph 59 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may

not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

60. Paragraph 60 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

61. Paragraph 61 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, Brenntag asserts the following in response to the allegations of subparagraphs (a)–(e):

a. Denied. By way of further response and without prejudice to the foregoing, the white stain in question was caused by a small spill that occurred on the morning of the EPA inspection. It was promptly and properly identified by Facility personnel and cleaned up before day's end. It was determined to have been a very small dilute product release from a tank trailer which passed over the area, which is an engineered, paved road berm – as the truck trailer angled upward to travel across the paved road berm, a small containment dam near the manway on the top of the tank trailer had a small quantity of diluted residual product (the tank trailer had been rinsed after loading) drained out of the dam and onto the paved, contained road surface. The quantity was *de minimis*, did not exceed an applicable reportable quantity, did not enter the environment or any stormwater facility, and none of the substance escaped from contained areas.

b. Denied. By way of further response and without prejudice to the foregoing, the stain was a very minor residual from a mineral spirit spill in the drum yard (not

more than 55 gals.), which already had been cleaned up and appropriately managed by Facility personnel trained in spill response and cleanup. At no time did the spill escape containment, nor was any reportable quantity exceeded.

c. Denied. By way of further response and without prejudice to the foregoing, the sheen in question was *de minimis* in volume and could well have been naturally-occurring iron bacteria associated with dirt and leaves sitting in a very small quantity of water, well less than a gallon.

d. Denied. By way of further response and without prejudice to the foregoing, Brenntag asserts that the pink material present inside of a tote outlet valve was *de minimis* in quantity (it would not have filled a Dixie cup) and was not permanganate. AT the time of the inspection, the tote had largely been drained through use. Brenntag denies that this pink material was on the ground surface. But even if a few drips reached the ground surface, it is a paved surface within secondary containment, so there was no release or threat of release to the environment. Brenntag tightened the valve at the time of the inspection and the very slow drip was stopped. On information and belief, the valve drip eventually would have been detected and addressed by Facility personnel who inspect the area regularly each day.

e. Denied. By way of further response and without prejudice to the foregoing, Brenntag asserts that the vacuum is used in a single area which is not used for hazardous waste storage or transportation. The vacuum is dedicated to removal of dirt and road dust that accumulates on wrapped product containers (generally already on the shipping pallet) prior to loading into transport trailers. The vacuum is not used to vacuum materials that if disposed are RCRA hazardous, and the materials accumulated in the vacuum at any given time,

and at the time of the EPA inspection, were appropriately characterized and managed based on generator knowledge, as non-hazardous waste.

62. Paragraph 62 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

**COUNT III – FAILURE TO PROVIDE INITIAL AND
REFRESHER HAZARDOUS WASTE TRAINING**

63. No response required. To the extent a response is required, Brenntag incorporates by reference its prior responses.

64. Paragraph 64 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

65. Denied as stated. Brenntag conducts extensive employee training that includes classroom and on-the-job training sessions that are focused on the proper handling and management of hazardous material and hazardous waste. Moreover, Brenntag was training more people than were required to be trained, demonstrating a commitment to care and diligence in its risk and hazard management safety programs. Not all of the 13 employees cited by EPA required such training even though they occasionally received it and EPA's assumption that they were is arbitrary and capricious.

66. Denied. By way of further response and without prejudice to the foregoing, Brenntag conducts extensive employee training that includes classroom and on-the-job sessions that are focused on the proper handling and management of hazardous material, including wastes that may be hazardous.

**COUNT IV – FAILURE TO MAINTAIN TRAINING
AND PERSONNEL RECORDS**

67. No response required. To the extent a response is required, Brenntag incorporates by reference its prior responses.

68. Paragraph 68 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

69. Paragraph 69 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

70. Denied as stated. It is admitted that Brenntag employed at least 13 people at the Facility. The remaining allegations are denied because the use of the phrase “positions related to hazardous waste management” is vague and ambiguous. Not all of the thirteen employees referred to by EPA were required to receive such training and EPA’s assumption that they were is arbitrary and capricious.

71. Denied as stated. It is admitted that Brenntag could not locate records for one employee required to receive such training during one calendar year.

72. Denied as stated. See the response to Paragraphs 64 and 70.

73. Paragraph 73 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

**COUNT V – FAILURE TO CONDUCT AND DOCUMENT
DAILY HAZARDOUS WASTE TANK INSPECTIONS**

74. No response required. To the extent a response is required, Brenntag incorporates by reference its prior responses.

75. Paragraph 75 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

76. Denied. By way of further response and without prejudice to the foregoing, the Accumulation Tanks are located in a high-traffic area of the Tank Farm and are visually inspected multiple times per day, through all operating work shifts; it is admitted that there were gaps in the inspection records.

77. Paragraph 77 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

**COUNT VI – FAILURE TO PROVIDE AIR EMISSIONS CONTROLS FOR
HAZARDOUS WASTE TANKS SUBJECT TO 40 C.F.R. 264 SUBPART CC**

78. No response required. To the extent a response is required, Brenntag incorporates by reference its prior responses.

79. Paragraph 79 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

80. Paragraph 80 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may

not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

81. Paragraph 81 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

82. Paragraph 82 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

83. Denied. By way of further response and without prejudice to the foregoing, Brenntag Subpart CC regulations does not require any air emission controls beyond those currently in place, as the two Accumulation Tanks each are (a) less than 20,000 gallons in capacity and have a maximum organic vapor pressure of less than 574 mmHg, and (b) under a fixed roof that is appropriately designed and operated. *Inter alia*, the Accumulation Tanks are also authorized air emission sources under the Pennsylvania Air Pollution Control Act permit issued for the Facility, which authorization process is part of Pennsylvania's EPA-approved State Implementation Plan, and the Tank Farm area within which they are placed has VOC air monitoring to detect leaks or spills.

84. Paragraph 84 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

85. Paragraph 85 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

86. Paragraph 86 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

COUNT VII – FAILURE TO LABEL AND MANAGE UNIVERSAL WASTE LAMPS

87. No response required. To the extent a response is required, Brenntag incorporates by reference its prior responses.

88. Paragraph 88 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

89. Paragraph 89 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

90. Paragraph 90 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

91. Paragraph 91 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may

not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

92. Paragraph 92 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

93. Paragraph 93 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

94. Paragraph 94 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

95. Admitted in part; denied in part. It is only admitted that Brenntag was not storing more than 5,000 kilograms of universal waste at the Facility. The remaining allegation states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter.

96. Paragraph 96 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

97. Paragraph 97 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

98. Paragraph 98 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

99. Admitted.

100. Admitted.

101. Admitted.

102. Paragraph 102 states a legal conclusion to which no response is required.

103. Paragraph 103 states a legal conclusion to which no response is required.

104. Paragraph 104 states a legal conclusion to which no response is required.

ANSWERS TO SPCC GENERAL ALLEGATIONS

105. Paragraph 105 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

106. Paragraph 106 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

107. Paragraph 107 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

108. Paragraph 108 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

109. Paragraph 109 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

110. Paragraph 110 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

111. Denied as stated. It is admitted that Brenntag stores and distributes oil and oil products from the Facility; the remainder of Paragraph 111 is denied and strict proof thereof is demanded at the hearing of this matter.

112. Paragraph 112 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the

hearing in this matter. By way of further response and without prejudice to the foregoing, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

113. The allegation as stated is denied. Brenntag admits that during time frames relevant to the CWA Counts, Brenntag stored and distributed oil and oil products.

114. Paragraph 114 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves. By way of further response and without prejudice to the foregoing, Brenntag acknowledges the existence of the referenced tanks and contents (subparagraphs a. – g.), except that the capacity of the tanks referenced are not in all cases correct and the tanks referenced in subparagraphs f. and g. contained used oil. Volumes of oil or oil products, and types of containers present in Outdoor Storage Areas 1 and 2 vary from day to day. EPA's capacity volumes for the two Outdoor Storage Areas are incorrect; the applicable capacity amounts, set forth in the current engineer-certified SPCC Plan, are considerably lower.

115. Admitted.

116. Denied as stated. The distance between the Facility and the Schuylkill River varies; relevant to the current action, a theoretical release of oil from the Facility, if it were to escape secondary containment (which has not happened during any relevant time period) would have to travel more than 0.5 miles to reach the Schuylkill River. The distance referenced by EPA is likely an "as the crow flies" distance, which is not relevant for any purpose in this action.

117. Paragraph 117 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, the cited statutory and regulatory citations, which may or may not be all of the statutory and regulatory citation relevant to a disposition of this matter, speak for themselves.

118. Denied. Among other things, EPA's description of how a spill would flow is incorrect and inaccurate. If a significant spill were to occur, even during a significant storm event, it would be contained on-site in adequate primary and secondary containment facilities; moreover, there has been no such release to a water of the United States in over 24 years of Facility operations. That is not happenstance, but the product of a well-designed and engineered facility, a well trained and drilled staff, and adoption and implementation of appropriate management practices associated with the handling, storage and distribution of hazardous materials, including oil and oil products.

119. Denied.

120. Paragraph 120 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

121. Denied.

122. Paragraph 122 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, the

cited statutory and regulatory citations, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

**COUNT VIII – FAILURE TO PREPARE A TIMELY AND ADEQUATE SPILL
PREVENTION, CONTROL AND COUNTERMEASURE PLAN**

123. No response required. To the extent a response is required, Brenntag incorporates by reference its prior responses.

124. Paragraph 124 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

125. Admitted.

126. Denied as stated. Brenntag had a comprehensive Emergency Response Plan regularly vetted with state and local emergency response personnel, as well as a Pennsylvania-required PPC plan addressing a broader range of possible releases. To the best of its current knowledge, Brenntag did not have an SPCC Plan certified by an engineer prior to 2014. Also to the best of its current knowledge, since the SPCC regulations are alleged to have come into effect, Brenntag has not had a release of an SPCC-regulated material to any water of the United States as a result of any spill at the Facility, a period of more than 24 years.

127. Paragraph 127 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

128. Paragraph 128 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves. It is specifically denied that the current SPCC Plan is inadequate in any respect.

129. Denied as stated. It is admitted that uncontaminated stormwater was released from retention basins at the Facility.

130. Admitted.

131. Paragraph 131 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves. It is specifically denied that the current SPCC Plan is inadequate in any respect.

ANSWERS TO PROPOSED PENALTY

132. Paragraph 132 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

133. Paragraph 133 states a legal conclusion to which no response is required. To the extent a response is required, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

134. Paragraph 134 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

135. No response required.

136. No response required.

137. Paragraph 137 states a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded at the hearing in this matter. By way of further response and without prejudice to the foregoing, the cited statutory and regulatory provisions, which may or may not be all of the statutory and regulatory citations relevant to a disposition of this matter, speak for themselves.

In unnumbered paragraphs, separated by count numbers, EPA has outlined a number of factors allegedly bearing on the amount of any penalty assessed under the applicable penalty policies implicated by this EPA action. For the RCRA counts, Brenntag disputes EPA's evaluation and arguments as to *potential for harm, deviation from regulatory requirements* and alleged *economic benefit*. For the CWA counts, Brenntag disputes EPA's assessment of the *seriousness* and *culpability* factors, and the assessment of *economic benefit*. Brenntag agrees that it has no history of violations relevant to the claims made by EPA in the Complaint, and agrees with EPA that there is no basis for an enhancement for a history of violations.

Without limiting the generality of the foregoing, on the RCRA counts, Brenntag does not believe any of the counts, even if proven, rise to even a *minor* level under the applicable RCRA Penalty Policy. Indeed, to the extent there were violations at all – and except with respect certain

counts discussed below, Brenntag disputes that there were any – they were *de minimis* and inconsequential. It is notable that EPA has not – and indeed cannot – allege any environmental harm or document any release of any substance, including any hazardous waste, to the environment. Moreover, the fact that EPA’s inspectors were uncertain about the regulatory status of certain materials observed during the course of the inspection is of no consequence; it is Brenntag’s knowledge that is dispositive on the issue and Brenntag asserts that all such materials were properly identified (*i.e.*, determined as to their regulatory status) and managed.

Brenntag acknowledges the following with respect to the RCRA counts:

- Count VII – Universal Waste. Brenntag acknowledges that at the time of the inspection it was not properly managing a number of light bulbs subject to the rule. That situation was promptly addressed. No environmental harm resulted and none was threatened.
- Count V – Tank Inspection Records. Brenntag acknowledges that there is a gap in its inspection records for the two Accumulation Tanks, but asserts that the tanks were nevertheless regularly observed/inspected multiple times per day. At no time was there a spill or release, and if there had been, even a catastrophic failure of both tanks simultaneously in a rainstorm, the release would have been fully contained and promptly remediated. But the fact is, there was never a spill or release and no harm or threat to the environment occurred.
- Count IV – Training Records. Brenntag acknowledges that it is missing refresher training records for its hazardous waste materials manager for one year in the last five. Not having that record (or any others, if it turns out other records were required) did not put the facility at risk and there was no harm to the environment as a result of the minor infraction.

- Count III – Refresher Training. Brenntag acknowledges that it is missing refresher training records for its hazardous waste materials manager for one year in the last five. In mitigation, this person has been on the job for many years in which he has received such training and knows the job “like the back of his hand” with or without the refresher training. Again, no harm to the environment was ever threatened or caused.

None of this acknowledged conduct rises to the level of a “major” or even a “moderate” violation under the applicable RCRA policy; all of the conduct is *de minimis* and should have been dealt with by a simple notice. The “deviation” from regulatory requirements was in each case minor, of short duration and/or of no environmental consequence. Any putative economic benefit is so minor as to not be calculable.

On the CWA counts, Brenntag acknowledges that before April 2014, it did not have an engineer-certified SPCC Plan. Prior to that time the Facility did have an emergency response plan and a Pennsylvania PPC Plan, which together substantively covered most if not all of the items in an SPCC Plan, plus additional Facility practices and spill management procedures. This included having a 24-hour on-call emergency response contractor in the event of a serious spill. The Facility also has been designed and constructed to appropriately manage and contain any SPCC-covered spill event. Brenntag self-discovered that it was without an SPCC Plan in 2013 and retained an outside consulting firm with expertise in the preparation of such plans to prepare and certify one. That consultant did so and in April 2014, Brenntag had a certified SPCC Plan. Thus, at the time of the EPA inspection in July 2014, and again in May 2015, Brenntag had an engineer-certified SPCC Plan. That Plan was found to have deficiencies, all of which have since been corrected. No engineering or construction changes were required at the Facility to confirm compliance with SPCC planning requirements, as determined by the third-party engineers who

completed and re-certified the SPCC Plan in 2015; stated another way, the Facility as it was constructed and being operated prior to April 2014 met SPCC requirements for secondary containment. EPA is resting its case almost entirely, it seems, on a statement by the engineer that prepared the first SPCC Plan that a small diked area around a 1,000 gal. concrete retention pit (fitted with a pump and hose) in Outside Storage Area #2 was not adequate to itself contain a spill event under the theoretical scenarios used by engineers when calculating spill management capabilities. EPA has completely ignored the fact that that is a mere interim containment point and that more than adequate secondary containment capacity exists within a designed/engineered retention basin. Indeed, EPA has proceeded to institute these legal proceedings despite the fact that it possesses competent evidence establishing that its allegations are unfounded. Brenntag's capacity to adequately control and contain a release from the largest container in storage during a significant precipitation event has been confirmed and the SPCC Plan re-certified. Brenntag also believes it is particularly noteworthy to these proceedings that it has not had a spill outside of secondary containment resulting in a discharge to a water of the United States or the shorelines of a water of the United States during any relevant time period. This is not happenstance, but is an obtained result due to good planning, well-constructed and maintained facilities and personnel who put safety and material management first. Prior to EPA's arrival in July 2014, the Huller Lane facility had been inspected dozens of times by EPA and/or the Pennsylvania Department of Environmental Protection and no such violations were noted.

Over the past 3 years EPA has settled dozens and dozens of SPCC cases where SPCC Plans were alleged to have been inadequate, or non-existent, for amounts consistently below \$5,000, underscoring the *de minimis* nature of claims of this type. These settlements all are a

matter of public record. Any advocacy by EPA in this proceeding for a greater penalty assessment would be arbitrary and capricious.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

- 138. No response required; Brenntag requests a hearing on the matter.
- 139. No response required; Brenntag requests a hearing on the matter.
- 140. No response required; Brenntag requests a hearing on the matter.

SETTLEMENT CONFERENCE

141. Based on EPA's pre-Complaint conduct and communications, Brenntag does not believe a Settlement Conference with Regional Office personnel would be helpful.

- 142. No response required.
- 143. No response required.

SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

- 144. No response required.

WHEREFORE, Brenntag requests an evidentiary hearing and, following which, entry of a judgment in its favor, along with such other relief as the Administrative Law Judge deems just and reasonable. To the extent permitted by law, Brenntag will at the appropriate time make a claim for attorneys' fees and costs of suit.



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Dated: February 18, 2016

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