UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of: **Ami Doduco, Inc. / Metalor Electronics PR LLC** PR Road 992, KM 0.3, Lot #2 P.O. Box 1005 Luquillo, PR 00773 **Respondent**	**Docket No. CAA-02-2011-1219** Administrative Complaint under Order Section 113 of the Clean Air Act, 42 U.S.C. § 7413

ADMINISTRATIVE COMPLAINT

I. JURISDICTION

1. This Administrative Complaint ("Complaint") initiates an administrative action for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d). The Complainant in this action is the Director of the Caribbean Environmental Protection Division of the United States Environmental Protection Agency ("EPA"), Region 2, who has been delegated the authority to institute this action.

2. EPA and the U.S. Department of Justice have determined, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this matter through administrative enforcement action.

II. APPLICABLE STATUTES AND REGULATIONS

3. Section 113(d) of the Act, 42 U.S.C. § 7413(d), provides for the assessment of penalties for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

4. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances. EPA promulgated regulations in 40 C.F.R. Part 68 to implement Section 112(r)(7) of the Act, which set forth the requirements of risk management programs that must be established and implemented at affected stationary sources. The regulations at 40 C.F.R. Part 68, Subparts A through G, require owners and operators of stationary sources to, among other things, develop and implement: (1) a management system to

oversee the implementation of the risk management program elements; and (2) a risk management program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program. Pursuant to 40 C.F.R. Part 68, Subparts A and G, the risk management program for a stationary source that is subject to these requirements is to be described in a risk management plan ("RMP") that must be submitted to EPA.

5. Sections 112(r)(3) and (5) of the Act, 42 U.S.C. §§ 7412(r)(3) and (5), require the Administrator to promulgate a list of regulated substances, with threshold quantities. EPA promulgated a regulation known as the List Rule, at 40 C.F.R. Part 68, Subpart F, which lists the regulated substances and their threshold quantities.

6. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. §7412(r)(7), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. Part 68 (including, but not limited to, submission of an RMP to EPA), no later than June 21, 1999, or three years after the date on which such regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which the regulated substance is first present in a process above the threshold quantity, whichever is latest.

7. The regulations set forth at 40 C.F.R. Part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. A covered process is subject to Program 3 requirements, as per 40 C.F.R. § 68.10(d), if the process: a) does not meet one or more of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b); and b) if either one of the following conditions is met: the process is listed in one of the specific North American Industry Classification System ("NAICS"") codes found at 40 C.F.R. § 68.10(d)(1) or the process is subject to the United States Occupational Safety and Health Administration ("OSHA") process safety management ("PSM") standard set forth in 29 C.F.R. § 1910.119.

8. The regulations set forth at 40 C.F.R. § 68.12(d) require that the owner or operator of a stationary source with a Program 3 process undertake certain tasks, including, but not limited to, development and implementation of a management system (pursuant to 40 C.F.R. § 68.15), the implementation of prevention program requirements, which include mechanical integrity (pursuant to 40 C.F.R. §§ 68.65-68.87), the development and implementation of an emergency response program (pursuant to 40 C.F.R. §§ 68.90-68.95), and the submission of additional information on prevention program elements regarding Program 3 processes (pursuant to 40 C.F.R. § 68.175).

III. DEFINITIONS

9. 40 C.F.R. § 68.3 defines "stationary source," in relevant part, as "any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur."

10. 40 C.F.R. § 68.3 defines "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, as amended, listed in 40 C.F.R. § 68.130, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

11. 40 C.F.R. § 68.3 defines "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the Act and set forth in 40 C.F.R. § 68.130.

12. 40 C.F.R. § 68.3 defines "process," in relevant part, as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

13. 40 C.F.R. § 68.3 defines "covered process" as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

IV. FINDINGS OF VIOLATIONS

14. Ami Doduco, Inc. and Metalor Electronics PR LLC (hereinafter referred to collectively as "Respondents") are owners and/or operators of a manufacturing plant located at Road 992, KM 0.3, Lot #2 in the Municipality of Luquillo, Puerto Rico (hereinafter referred to as the "Facility").

15. Ami Doduco, Inc. ("Respondent Ami"), submitted the initial Risk Management Plan (RMP) documentation on June 21, 1999. On April 19, 2010, Metalor Electronics PR LLC, ("Respondent Metalor") the current owner of the Facility, resubmitted the RMP.

16. The facility is a "stationary source" as that term is defined at 40 C.F.R. § 68.3.

17. Anhydrous ammonia is a regulated substance pursuant to Section 112(r)(2) and (3) of the Act and 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia as listed in 40 C.F.R. § 68.130, Table 2 is 10,000 pounds.

18. Respondents handled, stored and used, anhydrous ammonia in a process at the Facility in amounts exceeding the threshold quantity.

19. EPA conducted an inspection of the Facility on September 11, 2008, February 3, 2010 and a final inspection on June 9, 2011 to assess compliance with Section 112(r) of the Clean Air Act.

20. On September 23, 2009, EPA issued an Administrative Order (AO), Docket No. CAA-02-2009-1017 against Respondent Ami Doduco.

21. On October 8, 2009, EPA and Respondent Ami Doduco held a meeting to discuss the Order and to address the process to reach compliance with the Order and Section 112r.

22. On February 3, 2010, an EPA Enforcement Officer conducted a follow-up inspection at the Facility to determine whether it had developed and implemented the measures needed to reach compliance with their RMP Program.

23. During the follow-up inspection, EPA Enforcement Officer was informed that the Facility had been sold to Respondent Metalor and that the new company would continue the same manufacturing operations and will continue using anhydrous ammonia for its electrical wiring device manufacturing process.

24. During the follow-up inspection, the EPA Enforcement Officer was able to discuss by phone with Respondent Metalor consultants and with its Operational Manager the progress made in order to reach compliance with the RMP Program. However, since the actions needed to correct the EPA findings of September 11, 2008, were still being developed, EPA was not able to reach a conclusion on the Facility's compliance on February 3, 2010.

25. On June 9, 2011, two EPA Enforcement Officers re-inspected the Facility to determine if compliance with the RMP requirements had been met.

26. The EPA Enforcement Officer was informed that the Facility will definitely cease operations by the end of July, 2011.

COUNT I

27. During the September 11, 2008 Inspection, Respondent did not have its RMP updated and corrected in accordance with Sections 68.190 and 68.195, as required by 40 C.F.R. § 68.150.

28. During the September 11, 2008 Inspection, Respondent did not have a management system to oversee the implementation of the risk management program elements, as required by 40 C.F.R. § 68.15(d).

29. During the September 11, 2008 Inspection, Respondent did not produce process safety information pertaining to the equipment in the process, as required by 40 C.F.R. § 68.65(d)(1), including: electrical classification; ventilation system design; design codes and standards employed; material and energy balances and safety systems.

30. During the September 11, 2008 Inspection, Respondent did not produce any documentation stating that the equipment complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2).

31. During the September 11, 2008 Inspection, Respondent did not produce a process hazard analysis appropriate to the complexity of the process, as required by 40 C.F.R. § 68.67.

32. During the September 11, 2008 Inspection, Respondent did not produce updated documentation to certify that its operating procedures are current and accurate, as required by 40 C.F.R. § 68.69(c).

33. During the September 11, 2008 Inspection, Respondent did not have any record of operator training on equipment operating procedures and there was no record or verification of whether operators understood the training received as required by 40 C.F.R. 68.71(a)(1) and 40 C.F.R. § 68.71(c).

34. During the September 11, 2008 Inspection, Respondent did not have written mechanical integrity procedures available for review, as required by 40 CFR 68.73(b).

35. During the September 11, 2008 Inspection, Respondent did not have complete records of each inspection and test that has been performed on process equipment, as required by 40 C.F.R. 68.73(d)(4).

36. During the September 11, 2008 Inspection, Respondent did not have a written procedure for management of change (MOC) or for pre-startup review (PSR), as required by 40 C.F.R. §§ 68.75 and 68.77.

37. During the September 11, 2008 Inspection, Respondent did not produce an updated record of RMP compliance audits, as required by 40 C.F.R. § 68.79.

38. During the September 11, 2008 Inspection, Respondent did not have a written employee participation plan available for review, as required by 40 C.F.R. 68.83(a).

39. During the September 11, 2008 Inspection, Respondent did not have an Emergency Response Plan that is specific to the Facility, as required by 40 C.F.R. § 68.95.

40. Respondent's failure to comply with the requirements of 40 C.F.R. Part 68, as described above constitute violations of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). Respondent is therefore subject to the assessment of penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

V. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), as modified pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340 (December 11, 2008), which was mandated by the Debt Collection Improvement Act of 1996 and 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, EPA is authorized to assess civil penalties not to exceed $32,500 per day for each violation of Section 112 of the Act, 42 U.S.C. § 7412, that occurred that occurred after March 15, 2004 through January 12, 2009, and $37,500 per day for each violation of Section 112 of the Act that occurred after January 12, 2009. This amount is subject to revision under federal law and regulation. Civil penalties under Section 113 of the Act may be assessed by Administrative Order. On the basis of the violations of the Act described above, Complainant alleges that Respondent is subject to penalties for violating Section 112(r) of the Act, 42 U.S.C. § 7412(r).

The proposed civil penalty in this matter has been determined in accordance with the "Combined Enforcement Policy for CAA Section 112(r) Risk Management Program," dated August 15, 2001 ("Section 112(r) Penalty Policy"), and the December 29, 2008 memorandum entitled "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)," from Granta Y. Nakayama, Assistant Administrator, Office of Enforcement and Compliance Assurance, to the Regional Administrators. A copy of the Section 112(r) Penalty Policy accompanies this Complaint. A Penalty Calculation Worksheet which shows how the proposed penalty was calculated is included as Attachment 1.

In determining the amount of any penalty to be assessed, Section 113(e) of the Act, 42 U.S.C. § 7413(e), requires EPA to take into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violations.

In accordance with Section 113(d) of the Act, 40 C.F.R. Part 19, and the Section 112(r) Penalty Policy, and based on the facts alleged in this Complaint, Complainant proposes to assess a civil penalty of $166,075 against Respondent.

Payment of a civil penalty shall not affect Respondent's ongoing obligation to comply with the Act and other applicable federal, state, or local laws.

The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business. Respondent may submit appropriate documentation to rebut this presumption.

VI. PROCEDURES GOVERNING THIS ADMINISTRATIVE PROCEEDING

The rules of procedure governing this civil administrative litigation are entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS" (hereinafter, the "Consolidated Rules"), and are codified at 40 C.F.R. Part 22. A copy of the Consolidated Rules accompanies this Complaint.

Notice of Opportunity to Request a Hearing and Answering The Complaint

To request a hearing, Respondent must file an Answer to the Complaint, pursuant to 40 C.F.R. §§ 22.15(a) - (c). Pursuant to 40 C.F.R. § 22.15(a), such Answer must be filed within 30 days after service of the Complaint. An Answer is also to be filed, pursuant to 40 C.F.R. § 22.15(a), if Respondent contests any material fact upon which the Complaint is based, contends that the proposed penalty is inappropriate, or contends that Respondent is entitled to judgment as a matter of law. If filing an Answer, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. See 40 C.F.R. § 22.15(a). Complainant's copy of Respondent's Answer, as well as a copy of all other documents that Respondent files in this action, shall be sent to:

Carolina Jordán-García
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
1492 Ponce de León Ave.
Centro Europa Building, Suite 417
San Juan, Puerto Rico 00907- 4127
Email: jordan-garcia.carolina@epa.gov
Tel.: (787) 977-5834
Fax: (787) 729-7748

Pursuant to 40 C.F.R. § 22.15(b), Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where Respondent lacks knowledge of a particular factual allegation and so states that in its Answer, the allegation is deemed denied, pursuant to 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether Respondent requests a hearing.

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation, pursuant to 40 C.F.R. § 22.15(d).

Respondent's failure to affirmatively raise in its Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

A. Failure To Answer

If Respondent fails to file a timely answer to the Complaint, EPA may file a Motion for Default pursuant to 40 C.F.R. §§ 22.17(a) and (b), which may result in the issuance of a default order assessing the proposed penalty pursuant to 40 C.F.R. § 22.17(c). If a default order is issued, any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final. If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

VII. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions and objectives of the Act and the applicable regulations. See 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondent's ability to continue in business; and/or (4) any other special facts or circumstances Respondent wishes to raise. Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect

any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA Assistant Regional Counsel identified in Section VI.A., above.

Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing pursuant to 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction will be made simply because an informal settlement conference is held.

In the event settlement is reached, its terms shall be recorded in a written consent agreement signed by the parties and incorporated into a final order, pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). Respondent's entering into a settlement through the signing of such consent agreement and its complying with the terms and conditions set forth in such consent agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in thisComplaint. Respondent's entering into a settlement does not extinguish, waive, satisfy, or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address provided in Section VI.A., above), a copy of the check or other instrument of payment, as provided in 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified in Section VI.A., above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the

penalty assessed in this Complaint to the following addressee:

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

The check must be identified with a notation of the name and docket number of this case, which is set forth in the caption on the first page of this Complaint. Pursuant to 40 C.F.R. § 22.18(a)(3), upon EPA's receipt of such payment, a final order shall be issued. Furthermore, as provided in 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations made in the Complaint and to appeal such a final order. Such payment does not extinguish, waive, satisfy, or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: Sept. 30, 2011

Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency
Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907

TO:

Adrián Ortíz
Metalor Electronics PR LLC
PR Road 992, KM 0.3, Lot #2
P.O. Box 1005
Luquillo, PR 00773

Attachment

IN THE MATTER OF:

Ami Doduco, Inc. / Metalor Electronics PR LLC
PR Road 992, KM 0.3, Lot #2
Luquillo, PR 00773

Respondent

Docket No. CAA-02-2011-1219

Administrative Complaint under Order Section 113 of the Clean Air Act, 42 U.S.C. §7413

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original and Copy via UPS Mail to:

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

Copy by Certified Mail Return Receipt:

Adrián Ortiz
Metalor Electronics PR LLC
PR Road 992, KM 0.3, Lot #2
P.O. Box 1005
Luquillo, PR 00773

Dated: September 30, 2011