



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

MAY 29 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7011 3500 0000 0359 6143

Mr. Brian C. Brantley
Vice President, General Counsel and Secretary
Oiltanking North America
A Marquard & Bahls Company
15631 Jacintoport Boulevard
Houston, TX 77015

Re: *In the Matter of Oiltanking Houston, LP*, Docket No. CAA-06-2013-3312

Dear Mr. Brantley:

Enclosed is a copy of a Complaint and Notice of Opportunity for Hearing (Complaint) issued by the Environmental Protection Agency, Region 6 (EPA) to Oiltanking Houston, LP (Oiltanking) pursuant to the Clean Air Act ("the CAA"), 42 U.S.C. § 7401 et seq. The Complaint alleges that Oiltanking violated the general duty clause in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), at the Oiltanking bulk oil storage facility, 15631 Jacintoport Boulevard, Houston, Texas 77015. By filing this Complaint, EPA is seeking an administrative order assessing a civil administrative penalty of \$150,000.00. Also enclosed for your reference are the Consolidated Rules of Practice governing this administrative action (40 CFR Part 22).

Please take note of Section VI of the Complaint entitled "Notice of Opportunity to Request a Hearing". A written request for a hearing must be filed with the Regional Hearing Clerk within thirty (30) days of the service of this Complaint. If you fail to file an answer within thirty (30) days of the service of this Complaint, a default judgment may be entered, and the penalty assessed will become due and payable thirty (30) days after such judgment becomes final.

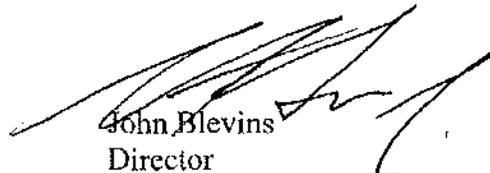
Whether or not you request a hearing, we invite you to confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it takes action to pursue the possibility of settlement through an informal conference. Any settlement would be formalized by the issuance of a Consent Agreement and Final Order signed on behalf of all parties, which also would constitute a waiver of the right to a hearing or appeal of any issue raised in the Complaint. A request for an informal conference does not extend the time by which you must request a hearing on the proposed penalty assessment; the two procedures can be pursued simultaneously.

Re: Oiltanking Houston, LP
CAA-06-2013-3312

If you have any additional questions regarding this matter, or would like to request an informal conference concerning it, please contact Mr. Jeffrey Clay, Assistant Regional Counsel, at the following address or phone number:

Jeffrey Clay
Office of Regional Counsel (6RC-ER)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Tel. (214) 665-7297

Sincerely,



John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2013 MAY 29 PM 3:19
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

Oiltanking Houston, L.P.,
Houston, TX

Respondent

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EPA DOCKET NO.
CAA-06-2013-3312

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR A HEARING

I. STATEMENT OF AUTHORITY

1. This Complaint and Notice of Opportunity for a Hearing (the “Complaint”) is issued to initiate an administrative action against Oiltanking Houston, L.P. (the “Respondent”) as authorized by sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended, 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B), and 40 CFR §§ 22.13 and 22.34(b). The Complainant in this action is the Director, Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6, who has been delegated the authority to issue such complaints on behalf of EPA in the State of Texas.

2. Through this action, Complainant seeks to assess a civil administrative penalty for violations of section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1). Complainant will show that Respondent owns and operates a storage tank terminal located in Houston, Texas, that Respondent’s operation of this facility is subject to general duties under section 112(r)(1), and that Respondent failed to fulfill its general duties leading up to and following an explosion and related fire on June 2, 2012, at the facility.

II. STATUTORY AND REGULATORY BACKGROUND

3. Under sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the Clean Air Act including, but not limited to, a requirement or prohibition of any rule promulgated under the Clean Air Act, other than those requirements specified in sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the Clean Air Act, 42 U.S.C. § 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty. As adjusted by the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 CFR § 19.4, the Administrator may assess a civil penalty of up to \$37,500 per day of violation for a violation occurring after January 12, 2009.

4. Under section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), “[i]t shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as section 654, Title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur”.

5. “Owner or operator” is defined in section 112(a)(9) of the Clean Air Act, 42 U.S.C. §7412(a)(9), as any person who owns, leases, operates, controls, or supervises a stationary source.

6. “Stationary source” is defined in section 112(r)(2)(C) of the Clean Air Act, 42 U.S.C. §7412(r)(2)(C), 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.

7. “Accidental release” is defined in section 112(r)(2)(A) of the Clean Air Act, 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.

III. FACTUAL BASIS OF VIOLATIONS

8. Respondent is a Texas Limited Partnership doing business in the State of Texas.

9. Respondent is a “person” as that term is defined in section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), and within the meaning of section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

10. As described by this Complaint, EPA has determined that Respondent has violated a requirement of the Clean Air Act.

11. EPA has jurisdiction over this action, which is authorized by sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B).

12. Respondent owns and operates a storage tank terminal located at 15631 Jacintoport Boulevard, Houston, Texas 77105-6534 (the "Facility").

13. The Facility, including its buildings, structures, equipment, installations, or substance emitting stationary activities and operations, belongs to the industrial group described by the Standard Industrial Classification Code 4266.0102 (petroleum and chemical bulk stations and terminals for hire).

14. The Facility includes approximately 63 storage tanks with various capacities and associated piping, including storage tank 80-7, which has a capacity of approximately 80,000 barrels.

15. Respondent stores crude oil in storage tank 80-7.

16. Respondent uses the lateral piping associated with storage tank 80-7 to move crude oil into, and out of, storage tank 80-7.

17. Crude oil associated with tank 80-7 and its attached lateral piping is not used directly as fuel or held for sale as fuel.

18. Crude oil is a volatile and flammable substance.

19. Information concerning extremely hazardous properties of crude oil is readily available. For example, the material safety data sheet (MSDS) for crude oil states:

The material is flammable and can be ignited by heat, sparks, flames, or other sources of ignition. Vapors may travel considerable distances to a source of ignition where they can ignite, flashback, or explode. May create vapor/air explosion hazard indoors, in confined spaces, or outdoors. Vapors are heavier than air and can accumulate in low areas.

20. Hazards associated with welding and other “hot work” in and around piping that contains or has contained flammable or explosive substances, such as crude oil, are described by industry standards and regulatory safety bulletins, including: *Safety in Welding, Cutting, and Allied Processes* by the American Welding Society (2005) (approved by the American National Standards Institute); *Safe Practices for the Preparation of Containers and Piping for Welding and Cutting* by the American Welding Society (2007) (approved by the American National Standards Institute); *Seven Key Lessons to Prevent Worker Deaths During Hot Work In and Around Tanks* by the U.S. Chemical Safety and Hazard Investigation Board (2010 safety bulletin) and *Removal of Hazardous Material from Piping Systems* by the U.S. Chemical Safety and Hazard Investigation Board (2004 safety bulletin).

21. Safe practices recommended by industry standards and regulatory bulletins include the need for adequate inspection; adequate ventilation; testing for gases, fumes, and vapors just before and during the hot work to ensure safety; isolating the area to prevent entry of hazardous substances; taking adequate steps to prevent pressure buildup; cleaning the pipe to be free of product residue; and “inerting” through water, inert gas, or sand to ensure that the welding area is free of flammable or explosive hazards.

22. Safe practices also are described by regulatory requirements of the Occupational Safety and Health Administration (OSHA), including 29 CFR § 1910.252(a)(3)(i) (no welding on used containers until they have been cleaned so thoroughly as to make absolutely certain there

are no flammable materials present) and 29 CFR § 1910.352(c) (no welding where the presence of flammable compounds creates a hazard).

23. On June 1, 2012, Respondent issued a hot work permit to employees of its contractor, L-Con, for the installation of a 24-inch slip-on flange to lateral piping connected to tank 80-7 at the Facility.

24. On June 1, 2012, Respondent and L-Con drained product from the lateral piping and installed blinds in the pipe to isolate the work area from potential hazards, such as explosive gases or residue, within tank 80-7 or the lateral pipe.

25. On June 1, 2012, L-Con cut and removed a section of the pipe where the flange was to be installed.

26. On June 1, 2012, L-Con observed residual product in the pipe after removing the cut section.

27. Respondent's shift supervisor used absorbent pads to clean residual product from the pipe prior to the commencement of welding activities on June 1, 2012.

28. On June 1, 2012, L-Con installed a vented plumber's plug (a Pioneer Works Foreman Night Cap) into the pipe between the cut end of the pipe and the last of the blinds that separated the lateral piping work area from tank 80-7.

29. Pioneer Works issued warnings concerning potentially unsafe uses of the Foreman Night Caps. These warnings state that Foreman Night Caps "are not pressure holding

devices and should never be used for that purpose”, and that “improper use of Pioneer Works Foreman Night Caps as pressure holding devices could result in serious injury”.

30. L-Con placed the flange and began welding it to the pipe on June 1 2012, but it did not complete welding before ending work for the day.

31. On the morning of June 2, 2012, L-Con employees returned to the Facility and continued to weld the flange to the lateral pipe.

32. On the morning of June 2, 2012, Respondent’s shift supervisor used a meter to monitor the percentage of lower explosive limit in the atmosphere in the area of the flange work and determined that the conditions were safe to proceed with welding.

33. On June 2, 2012, Respondent issued a hot work permit to L-Con to continue the installation of the flange.

34. Two L-Con employees were working on the flange welding project on June 2, 2012.

35. Tank 80-7 and the lateral pipe had been in use for over 20 years at the time of the flange replacement work.

36. On June 2, 2012, after one hour of continuous welding on the flange, a release, explosion, and fire occurred in the area of the welding work.

37. As a result of the release, explosion, and fire, the cast aluminum Foreman Night Cap broke into fragments and was expelled from the end of the pipe striking the L-Con employees.

38. The fire, burning residual crude oil vapors released from the cut end of the pipe, was extinguished by hand held fire extinguishers.

39. As a result of the release, explosion, and fire, one of the L-Con workers died from injuries sustained during the expulsion of the Foreman Night Cap, and another L-Con worker was injured requiring hospitalization.

40. The release, explosion, and fire also resulted in substantial property damage at the Facility and allowed the continued release of extremely hazardous substances (crude oil and/or its vapors) to the ambient air.

41. The Harris County Fire Marshal's Office determined that the explosion resulted from ignition of fugitive ignitable vapors released from the lateral pipe where the welding was being performed. The vapors from the pipe were ignited by the open arc of the ongoing welding operation and led to the explosion and resulting fire.

42. Monitoring conducted by the Fire Marshal after the explosion measured 160 parts per million (ppm) of Volatile Organic Compounds (VOCs) at the end of the exploded pipe.

43. With respect to the flange installation work at the Facility on June 1, 2012, and June 2, 2012, Respondent did not ensure that measures to prevent or minimize an accidental release, explosion or fire were taken before and during the welding work.

44. Respondent did not assure that adequate measures were taken before and during the work to monitor the temperature, pressure, and percent of lower explosive limit in the lateral pipe to ensure that welding could be performed safely at the flange.

45. Respondent did not assure that adequate measures were taken to effectively clean the lateral pipe of product or hazardous product residue to ensure that welding could be performed safely at the flange.

46. Respondent did not assure that the lateral pipe was filled with an inert gas, sand, or water to ensure that welding could be performed safely at the flange.

IV. VIOLATIONS

Count 1. Violation of Section 112(r)(1) of the Clean Air Act (General Duty Clause) –

Failure to Design and Maintain a Safe Facility

47. Complainant incorporates paragraphs 1-46 as if restated herein.

48. The Facility` is a “stationary source” as that term is defined in section 112(r)(2)(C) of the Clean Air Act, 42 U.S.C. § 7412(r)(2)(C).

49. Crude oil is an extremely hazardous substance as referenced in section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1) due to its volatile, flammable and explosive properties.

50. The Facility produces, processes, handles or stores extremely hazardous substances, including crude oil.

51. The Facility is under Respondent’s control as the owner and operator.

52. Respondent is subject to the general duties described in section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), with respect to its operation of the Facility.

53. An accidental release of extremely hazardous substances occurred at the Facility on June 2, 2012. Crude oil vapors from the cut end of the lateral pipe to tank 80-7 escaped to the ambient air and ignited, causing the explosion and fire described in this Complaint.

54. On June 1, 2012, and June 2, 2012, Respondent failed to design and maintain a safe facility and did not take necessary steps to prevent accidental releases. Respondent did not follow publicly available and accepted practices to ensure safety during hot welding on pipe used to move an extremely hazardous substance such as crude oil. Respondent failed to fill the lateral piping with an inert substance such as gas, water, or sand prior to hot welding. Respondent failed to take measures to effectively clean the pipe of crude oil product and residue. Additionally, Respondent failed to continuously, or intermittently, monitor the percent of lower explosive limit, temperature or pressure in the pipe to detect and prevent the build-up of explosive gas and pressure.

55. Therefore, Respondent failed to satisfy its general duties under section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1).

Count 2. Violation of Section 112(r)(1) of the Clean Air Act (General Duty Clause) –

Failure to Minimize the Hazardous Release

56. Complainant incorporates paragraphs 1-55 as if restated herein.

57. Additionally, by utilizing the Foreman Night Cap as a pressure holding device in the pipe during the flange welding operations on June 1, 2012, and June 2, 2012, the Respondent failed to minimize hazards related to an accidental release. Respondent did not follow the

manufacturer's warnings not to use the Foreman Night Cap as a pressure holding device. The Respondent's use of the Foreman Night Cap in this manner resulted in the cast aluminum fragments being expelled from the pipe that injured and killed the L-Con workers.

58. Therefore, Respondent failed to satisfy its general duties under section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1).

V. PROPOSED PENALTY

59. Complainant incorporates paragraphs 1-58 as if restated herein.

60. Complainant believes that a penalty pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) is warranted.

61. Complainant has identified two separate penalties that were each two days in duration.

62. Pursuant to section 113(e)(1) of the Clean Air Act, 42 U.S.C. § 7413(e)(1), in determining the amount of any penalty to be assessed, the Administrator shall consider (in addition to such other factors as justice may require) 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 (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. Attached to this Complaint are penalty calculation worksheets that explain the reasoning behind the proposed penalty, as required by 40 C.F.R. § 22.14(a)(4).

63. In light of the facts alleged in this Complaint, including, but not limited to, the death and injury of two contractors and the close proximity of large quantities of extremely hazardous substances to the release, fire, and explosion, and having considered the statutory penalty factors in section 113(e)(1) of the Clean Air Act, 42 U.S.C. § 7413(e)(1), Complainant is seeking the issuance of an administrative order against Respondent assessing a total civil administrative penalty of **one hundred and fifty thousand dollars (\$150,000.00)** for the two, two-day violations alleged in Section IV of this Complaint.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

64. By the issuance of this Complaint, Respondent is hereby notified of its opportunity to answer and request a hearing on the record in this matter.

65. If Respondent contests any material fact upon which this Complaint is based, contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk for EPA Region 6 not later than thirty (30) days after being served with this Complaint.

66. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations set forth in this Complaint with regard to which Respondent has knowledge. If Respondent has no knowledge of a particular factual allegation and states so in its Answer, the allegation will be deemed denied. The failure of Respondent to admit, deny or

explain any material factual allegation in the Complaint constitutes an admission of the allegation.

67. Respondent's Answer also shall state (a) the circumstances or arguments which are alleged to constitute the grounds of defense, (b) the facts which Respondent disputes, (c) the basis for opposing any proposed relief, and (d) whether a hearing is requested. A hearing on the issues raised by this Complaint and Respondent's Answer shall be held upon request of the Respondent in its Answer. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 554 and 556, and the Consolidated Rules of Practice, 40 CFR Part 22, a copy of which is included.

68. The Answer must be sent to:

Regional Hearing Clerk (6RC-D)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

In addition, Respondent is requested to send a copy of the Answer and all other documents that it files in this action to:

Mr. Jeffrey M. Clay
Assistant Regional Counsel (6RC-EW)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Clay.jeffrey@epa.gov

69. As provided in 40 CFR § 22.17, if Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, Respondent may be deemed to have

admitted all allegations made in this Complaint and waived its right to a hearing. A Default Order may thereafter be issued, and the civil penalty assessed shall become due and payable without further proceedings thirty (30) days after a Default Order becomes final.

70. Respondent is further informed that 40 CFR Part 22 prohibits any ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

VII. SETTLEMENT CONFERENCE

71. Whether or not Respondent requests a formal hearing or responds with an Answer, Respondent may request an informal conference in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, Respondent may contact Mr. Jeffrey Clay, Assistant Regional Counsel, at the address or e-mail in paragraph 68 of this Complaint.

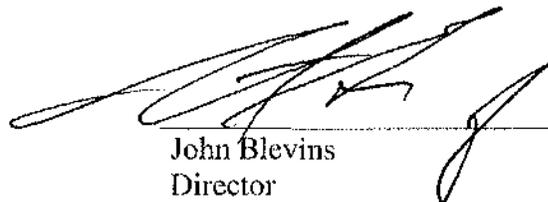
72. Please note that a request for an informal settlement conference does not extend the 30-day period during which Respondent must submit a written Answer and, if desired, a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

73. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Respondent is advised that no penalty reduction will be made simply because such a conference is held. As set forth in 40 CFR

Complaint and Notice of Opportunity for Hearing
In the Matter of Oiltanking Houston, L.P.
Docket Number CAA-06-2013-3312

§ 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives and a Final Order issued by the Regional Administrator, EPA Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date: _____
MAY 29 2013



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Complaint and Notice of Opportunity for Hearing (Complaint) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint and the Consolidated Rules of Practice were placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 7011350000003596143

Mr. Brian C. Brantley
Vice President, General Counsel
and Secretary
Oiltanking North America
15631 Jacintoport Boulevard
Houston, Texas 77015

Date: May 29, 2013

Sandra Hardy
U.S. EPA, Region 6
Dallas, Texas

**Penalty Calculations
Oiltanking Houston Terminal
Owned by: Oiltanking Houston, L.P.
June 2, 2012 Release
CAA 112(r)(1) "General Duty Clause"**

Penalty = [Economic Benefit] + [Gravity Component (*i.e.*, seriousness of each violation) ± adjustment factors + (duration component of the oldest violation + size of violator (both duration and size are calculated only once))]

Proposed Penalty: **\$150,000.00**

Based on the Combined Enforcement Policy for Clean Air Act Section 112(r)(1), the General Duty Clause, and Clean Air Act Section 112(r)(7) and 40 C.F.R. Part 68, Chemical Accident Prevention Provisions.

Economic Benefit: (No economic benefit from two day 112(r)(1) violation). \$0.00

Gravity Component:

CAA 112(r)(1) General Duty Violation, Count 1: Failed to design and maintain a safe facility, taking such steps as necessary to prevent releases.

Potential for Harm: Major: Industry standards regarding preparation of equipment for safe welding were not adhered to, which undermined the ability of the facility to prevent releases of extremely hazardous substances. Failing to properly prepare the equipment for welding on June 1 and 2, 2012 had a significant impact on human health based on the flammability of the substances involved. The incident resulted in damages to the facility, one contractor fatality and one injury to a contractor.

Extent of Deviation: Major: Industry standards regarding preparation of equipment for safe welding were not adhered to, thus the violator deviated from the requirement of the statute, such that important aspects of the requirements were not met, resulting in substantial noncompliance.....\$37,500.00

Table II
The GDC Seriousness Matrix

		Potential for Harm		
		Minor	Moderate	Major
Extent of Deviation	Major	\$25,000	\$30,000	\$37,500
		\$20,000	\$25,000	\$30,000
	Moderate	\$10,000	\$15,000	\$20,000
		\$5,000	\$10,000	\$15,000
	Minor	\$1,000	\$3,000	\$5,000
		\$500	\$1,000	\$3,000

(Combined Enforcement Policy for Clean Air Act Section 112(r)(1))

CAA 112(r)(1) General Duty Violation, Count 2: Failed to minimize the consequences of accidental releases that do occur.

Potential for Harm: Major: Industry standards regarding monitoring during welding were not adhered to, which undermined the ability of the facility to detect releases of extremely hazardous substances and minimize their consequences. Failing to properly monitor during welding on June 1 and 2, 2012 had a significant impact on human health based on the flammability of the substances involved. The incident resulted in damages to the facility, one contractor fatality and one injury to a contractor.

Extent of Deviation: Major: Industry standards regarding monitoring during welding were not adhered to thus the violator deviated from the requirement of the statute, such that important aspects of the requirements were not met, resulting in substantial noncompliance.

.....\$37,500.00

**Table II
The GDC Seriousness Matrix**

		Potential for Harm		
		Minor	Moderate	Major
Extent of Deviation	Major	\$25,000	\$30,000	\$37,500
		\$20,000	\$25,000	\$30,000
		\$10,000	\$15,000	\$20,000
	Moderate	\$5,000	\$10,000	\$15,000
		\$1,000	\$3,000	\$5,000
		\$500	\$1,000	\$3,000
	Minor			

(Combined Enforcement Policy for Clean Air Act Section 112(r)(1))

Duration of Violation: The duration of time for the penalty calculation was June 1, 2012 to June 2, 2012, which is two days..... \$750.00

Size of the Violator: Oiltanking Houston, L.P. is a subsidiary of Marquard & Bahls AG. The net income of Marquard & Bahls AG, for 2011 is reported as \$92,600,000.00 in their 2011 annual report at http://oiltanking.com/Oiltanking/pdf/MB_GB-2011_Elemente_engl.pdf. The size of the violator penalty was calculated as \$70,000.00 using the annual net income of the company. \$70,000.00

Proposed Penalty without Damages: \$145,750.00

Adjustments:

Extent of Damages: The policy allows for the assessment of additional penalty adjustments in cases of a release, fire, explosion or other significant event, using Appendix B. This adjustment is applied to the gravity component before adjusting for the penalty duration, size of violator, and other adjustments. The release, explosion and fire lead to significant onsite damages, one serious injury, and one fatality.

Point Assessed Table:

Points	Description of Incident Consequences
1	Explosion or fire only.
3	Injuries or potential injuries and/or chemical exposures with hospital admission.
4	Deaths or potential for deaths (include intensive care admissions) (multiply for each).
1	Damage or potential damage to facility, undetermined amounts.
9	Total

Multiplier = 9 points = 1 - 10 points = 1.1 to 2.0 = 1.8 [1.8X\$75,000=\$135,000]..... \$135,000.00

Total Penalty [\$135,000+\$750+\$70,000]..... \$205,750.00

Reduced for statutory maximum of \$37,500 per day, per count: -\$55,750.00

Proposed Penalty: \$150,000.00