

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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IN THE MATTER OF:)

Eureka Hunter Pipeline, LLC)
1111 Louisiana Street, Suite 4520)
Houston, Texas 77002,)

Respondent.)

Carbide Facility)
1 Union Carbide Road)
Hastings, West Virginia 26419,)

Facility.)

) EPA Docket Nos. EPCRA-03-2016-0087;
) CAA-03-2016-0087

) Proceedings Pursuant to Sections 312 and 325
) of the Emergency Planning and Community
) Right-to-Know Act, 42 U.S.C. §§ 11022,
) 11045, and Sections 112(r) and 113 of the
) Clean Air Act, 42 U.S.C. §§ 7412, 7413,
) and 40 C.F.R. § 22.13(b) and 22.18(b)

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, Section 113(d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(d), and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2) and (8).

2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. § 22.4(b) and 22.18(b)(3).

3. For the purpose of this proceeding, Respondent Eureka Hunter Pipeline, LLC (“Respondent”) admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA’s jurisdiction with respect to the execution or enforcement of this Consent Agreement.

4. With the exception of Paragraph 3, above, for the purpose of this proceeding, Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in this Consent Agreement, but expressly waives its right to contest said allegations.

FINDINGS OF FACT

5. Eureka Hunter Pipeline, LLC (“Respondent”) is a limited liability company organized in the State of Delaware, with its principal place of business located at 1111 Louisiana Street, Suite 4520 in Houston, Texas.

6. Respondent has owned and operated the compressor station located at 1 Union Carbide Road in Hastings, West Virginia (the “Facility”) since March 6, 2013.

7. The Facility receives field gas from a pipeline gathering system, removes heavy liquids from the gas stream with separators, compresses the gas, and removes oil and water. Respondent stores the heavy liquids/condensate in storage tanks until the condensate is transferred to trucks. The gas is distributed to a pipeline.

8. On March 22, 2014, EPA sent an information request to Respondent pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, to determine Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Respondent submitted a response to this information request to EPA on May 22, 2014.

9. On November 18, 2014, EPA conducted an inspection of the Facility to determine whether Respondent was in compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the Chemical Accident Prevention Provisions at 40 C.F.R. Part 68.

10. On February 23, 2015, EPA sent an information request to Respondent pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9604(e), to determine Respondent’s compliance with the hazardous chemical reporting requirements of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022. Respondent submitted to EPA a response to the information request on April 15, 2015.

11. At all times relevant to this CA/FO, the Facility was a facility at which a hazardous chemical was produced, used or stored.

COUNT 1
FINDINGS OF FACT RELATED TO THE VIOLATION
OF SECTION 312 OF EPCRA – CALENDAR YEAR 2014

12. The factual allegations contained in Paragraphs 5 through 11 of this CA/FO are incorporated by reference herein as though fully set forth at length.

13. As a corporation, Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and its regulations, 40 C.F.R. § 370.66.

14. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. § 370.66.

15. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available a Material Safety Data Sheet (“MSDS”) for a hazardous chemical in accordance with the Occupational Safety and Health Administration (“OSHA”) Hazard Communication Standard, 29 U.S.C. §§ 651 et seq., and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous substance (“EHS”)) is present at any one time during a calendar year in a quantity equal to or greater than its applicable minimum threshold level for reporting (“MTL”) or threshold planning quantity (“TPQ”) to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”) for the previous calendar year identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

16. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 312 of EPCRA that occurs before January 30, 1997. Section 325, as amended by the Debt Collection Improvement Act of 1996 and the subsequent Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$37,500 for each violation of Section 312 of EPCRA that occurs after January 12, 2009.

17. Respondent is an “employer,” as that term is defined at 29 C.F.R. § 1910.1200(c), because Respondent is engaged in a business where chemicals are either used, distributed, or are produced for use or distribution.

18. Respondent is required to have an MSDS at its Facility for each hazardous

chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).

19. According to information submitted to EPA by Respondent, Respondent had present at the Facility during calendar year 2014, the following chemicals in amounts exceeding their respective thresholds:

	Threshold (in lbs)	2014 (in lbs)
Engine Oil	10,000	25,000 to 49,000
Natural Gas Condensate	10,000	1,000,000 to 9,999,999

20. The chemicals listed in the preceding paragraph are “hazardous chemicals” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66, and are subject to Section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

21. The MTL for each of the hazardous chemicals is listed in paragraph 19, above.

22. Respondent is the owner or operator of a facility that is required to prepare or have available MSDSs for the hazardous chemicals listed above under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651, et seq., and 29 C.F.R. § 1910.1200.

23. Respondent had present at the Facility during calendar year 2014 two chemicals in quantities equal to or exceeding their respective MTLs.

24. The State Emergency Response Commission (“SERC”) for the Facility is, and at all times relevant to this CA/FO has been, the West Virginia Division of Homeland Security and Emergency Management, located at 1900 Kanawha Boulevard East in Charleston, West Virginia.

25. The Local Emergency Planning Committee (“LEPC”) for the Facility is, and at all times relevant to this CA/FO has been, the Wetzel County LEPC in New Martinsville, West Virginia.

26. The local fire department for the Facility is the Pine Grove Volunteer Fire Department at Joliff Street, Route 20 in Pine Grove, West Virginia.

27. On or about July 2, 2015, Respondent submitted to the SERC, LEPC, and local fire department, a Chemical Inventory Form for calendar year 2014 identifying the two chemicals as present at the Facility in quantities equal to or greater than the MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

28. Respondent failed to timely submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the

Facility for calendar year 2014 identifying the total quantity of engine oil and natural gas condensate present at the Facility during the calendar year.

29. From March 1, 2015 until July 2, 2015, Respondent was in violation of the requirement to timely submit to the SERC, LEPC and local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar year 2014 identifying the total quantity of engine oil and natural gas condensate present at the Facility during the calendar year.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA - 2014**

30. Respondent's failure to timely submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar year 2014 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT 2
FINDINGS OF FACT RELATED TO THE VIOLATION
OF SECTION 312 OF EPCRA – CALENDAR YEAR 2013**

31. The factual allegations contained in Paragraphs 5 through 30 of this CA/FO are incorporated by reference herein as though fully set forth at length.

32. According to information submitted to EPA by Respondent, Respondent had present at the Facility during calendar year 2013, the following two chemicals in amounts exceeding their respective thresholds:

	Threshold (in lbs)	2013 (in lbs)
Engine Oil	10,000	25,000 to 49,000
Natural Gas Condensate	10,000	1,000,000 to 9,999,999

33. On or about July 2, 2015, Respondent submitted to the SERC, LEPC, and local fire department, a Chemical Inventory Form for calendar year 2013 identifying the two chemicals as present at the Facility in quantities equal to or greater than the MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

34. Respondent failed to timely submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar year 2013 identifying the total quantity of engine oil and natural gas condensate present at the Facility during the calendar year.

35. From March 1, 2014 until July 2, 2015, Respondent was in violation of the

requirement to timely submit to the SERC, LEPC and local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar year 2014 identifying the total quantity of engine oil and natural gas condensate present at the Facility during the calendar year.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA - 2013**

36. Respondent's failure to timely submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar year 2013 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CAA LEGISLATIVE AND REGULATORY HISTORY AND DEFINITIONS

37. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

38. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires the Administrator to set threshold quantities for listed regulated substances. The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.

39. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances 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. Section 112(r)(1) is hereinafter referred to herein as the "General Duty Clause."

40. The General Duty Clause applies to any stationary source producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, or other extremely hazardous substances. Extremely hazardous substances include, but are not limited to, regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals on the list of extremely hazardous substances published under EPCRA at 40 C.F.R. Part 355, Appendices A and B.

41. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines "stationary source," as "any buildings, structures, equipment, installations, or substance emitting stationary

activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.”

42. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as including an individual, corporation, partnership, association, State, municipality, political subdivision of a State and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

43. As used herein, the term “day” shall mean calendar day.

44. All terms not defined herein shall have the meanings set forth in the CAA.

45. Section 113(d)(1)(B), 42 U.S.C. § 7413(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

COUNT 3
FINDINGS OF FACT RELATED TO
VIOLATIONS OF SECTION 112(r)(1) OF THE CAA

46. The factual allegations contained in Paragraphs 5 through 45 of this CA/FO are incorporated by reference herein as though fully set forth at length.

47. On November 18, 2014, EPA conducted an inspection of the Facility to determine whether Respondent was in compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the Chemical Accident Prevention Provisions at 40 C.F.R. Part 68.

48. At the time of the inspection, EPA inspectors observed that Respondent stores condensate in ten 664-barrel atmospheric, aboveground storage tanks.

49. According to information provided by Respondent, Respondent has been storing condensate in said tanks since approximately March 2013.

50. According to the threshold quantity analysis of the condensate, prepared by and provided by Respondent to EPA, the following listed regulated substances are each present at the Facility in quantities over 10,000 pounds (“lbs”): methane (45,244 lbs), propane (95,349 lbs), isobutane (33,127 lbs), butane (89,882 lbs), isopentane (60,474 lbs) and pentane (80,189 lbs). Further, each of the six listed regulated substances comprise more than 1% of the condensate.

51. The substances methane, propane, isobutane, butane, isopentane, and pentane are listed on the List of Regulated Flammable Substances, at 40 C.F.R. § 68.130, Table 3. The condensate constitutes a flammable mixture.

52. Applicable industry standards for the proper storage of flammable liquids include National Fire Protection Association 30, *Flammable and Combustible Liquid Code Handbook*, 8th ed. (2008) (“NFPA 30”).

53. Section 22 of NFPA 30 addresses the storage of flammable liquids in aboveground storage tanks. Chapter 22 includes a provision addressing the storage of flammable and combustible liquids. Section 22.7.1.1 of NFPA 30 states, “[e]very aboveground storage tank shall have emergency relief venting in the form of construction or a device or devices that will relieve excessive internal pressure caused by an exposure fire.”

54. According to NFPA 30, Section 22.7.1.1, the emergency venting capacity for a 664-barrel tank measuring 14 feet x 25 feet with an interpolated wetted area of 1,099 square feet should be 540,335 standard cubic feet per hour (“SCFH”). *See* NFPA 30, Required Emergency Venting Relief Table, at § 22.7.3.2.

55. The thief hatches on the 664-barrel tanks at the Facility do not meet this standard. The thief hatches have a normal venting capacity of only 25,000 CFH at their working pressure of 16 ounces.

56. EPA inspectors observed that the 664-barrel aboveground storage tanks at the Facility described in Paragraph 49 did not have emergency vents. According to the pressure curve of the thief hatch, the total venting capacity of the aboveground storage tanks is 25,000 SCFH at their working pressure of 16 ounces.

57. EPA determined that Respondent failed to store flammable materials in aboveground tanks at the Facility with sufficient emergency venting capacity to provide safety consistent with industry standards.

58. Based on information provided by Respondent to EPA during and after the inspection, EPA notified Respondent by letter dated May 8, 2015 that Respondent had not ensured that the process was designed in compliance with industry standards.

59. On July 16, 2015, EPA and Respondent entered into an Administrative Settlement Agreement and Order on Consent, EPA Docket No. CAA-03-2015-0181DA (“ASAOC”), pursuant to the authority of Sections 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B). The ASAOC required Respondent to install emergency venting devices on all of the aboveground storage tanks at the Carbide Facility storing condensate to provide protection with the applicable provisions of NFPA 30, Section 22.7 (hereafter the “NFPA 30 Emergency Venting Work”).

60. Based on information available to EPA, Respondent is in the process of complying with the obligations under the ASAOC, with a scheduled completion date of December 2016. Nothing in this CA/FO is intended to alter, in any way, the obligations of Respondent under the ASAOC to complete the NFPA 30 Emergency Venting Work.

**CONCLUSIONS OF LAW RELATED TO THE
ALLEGED VIOLATION OF SECTION 112(r)(1) OF THE CLEAN AIR ACT**

61. Respondent is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

62. At all times relevant to this CA/FO, Respondent has been an owner of the Facility.

63. The Facility is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

64. The constituents of the condensate in the aboveground tanks at the Facility are “extremely hazardous substances” for purposes of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), because they are listed pursuant to Section 112(r)(3) of the CAA, at 40 C.F.R. § 68.130, Table 3, as regulated flammable substances.

65. Until Respondent completes the NFPA 30 Emergency Venting Work under the ASAO, Respondent will be in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

66. Complainant further alleges that Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

67. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations the first date of which occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

SETTLEMENT

68. In accordance with 40 C.F.R. § 22.18(c), and in full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of Section 312 of EPCRA, 42 U.S.C. § 11022, in the amount of **\$22,092** (“EPCRA Penalty”), and a civil penalty for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in the amount of **\$16,755**, (“CAA Penalty”), set forth above, for a total penalty of **\$38,847** (referred to as “Civil Penalty”).

PAYMENT TERMS

69. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent agrees to:

- a. Within thirty (30) days of the Effective Date of this CA/FO (the “Final Due Date”), pay the Civil Penalty of \$38,847, referencing “EPA Docket Nos. EPCRA-03-2016-0087; CAA-03-2016-0087” and using one of the methods identified in Paragraph 70.a-d, below.
- b. Additional payment guidance is available at:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>
- c. Within 24 hours of payment of the Civil Penalty, Respondent shall send proof of payment to:

Cynthia T. Weiss
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC42)
Philadelphia, PA 19103-2029

and

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC00)
Philadelphia, PA 19103-2029

The term “proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “EPA Docket Nos. EPCRA-03-2016-0087; CAA-03-2016-0087.”

70. Payment of the Civil Penalty shall be made using one of the following methods:

- a. *Check.*
 - (i) All checks shall be made payable to United States Treasury;
 - (ii) All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077

St. Louis, MO 63197-9000
Contact: Heather Russell, 513-487-2044

- (iii) All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

- (iv) All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 M.L. King Drive
Cincinnati, OH 45268-0001

- b. *Electronic Wire Transfer.* All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- c. *ACH.* All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury Lisby Facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

d. *On-Line Payment Option.*

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

71. The EPCRA Penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the following: the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

72. The CAA Penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012).

73. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the Penalties by the Final Due Date shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

74. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will waive interest on any amount of the civil penalty that is paid by the Final Due Date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

75. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the Final Due Date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

76. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

GENERAL PROVISIONS

77. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2).

78. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

79. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

80. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

81. By signing this Consent Agreement, all parties agree that each party's obligations under this Consent Agreement and accompanying Final Order constitute sufficient consideration for the other party's obligations.

82. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

83. Each party to this action shall bear its own costs and attorney's fees.

84. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

85. Nothing in this Consent Agreement shall relieve Respondent of the duty to

comply with all applicable provisions of EPCRA, the CAA, and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

86. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment, nor, in such case, shall this Consent Agreement be construed so as to limit any defense that Respondent may have under EPCRA, the CAA or otherwise.

FOR RESPONDENT EUREKA HUNTER PIPELINE, LLC:



Chris Akers
Executive Vice President
and Chief Operating Officer

3/21/16

Date

FOR COMPLAINANT:



Karen Melvin, Acting Division Director
Hazardous Site Cleanup Division
U.S. Environmental Protection Agency, Region 3

MAR 23 2016

Date

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

IN THE MATTER OF:

**Eureka Hunter Pipeline, LLC
1111 Louisiana Street, Suite 4520
Houston, Texas 77002,**

Respondent.

**Carbide Facility
1 Union Carbide Road
Hastings, West Virginia 26419,**

Facility.

)
)
) **EPA Docket Nos. EPCRA-03-2016-0087;**
) **CAA-03-2016-0087**
)
)
) **Proceedings Pursuant to Sections 312 and 325**
) **of the Emergency Planning and Community**
) **Right-to-Know Act, 42 U.S.C. §§ 11022,**
) **11045, and Sections 112(r) and 113 of the**
) **Clean Air Act, 42 U.S.C. §§ 7412, 7413,**
) **and 40 C.F.R. § 22.13(b) and 22.18(b)**
)

FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Eureka Hunter Pipeline, LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific references to Sections 22.1(a)(2), (7) and (8), 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

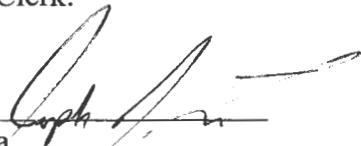
Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to herein is consistent with 40 C.F.R. Part 19, and is based upon consideration of, *inter alia*, EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012), and the statutory factors set forth in Section 113(e) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(e), and EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

NOW, THEREFORE, PURSUANT TO Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice, **IT**

IS HEREBY ORDERED that Respondent pay a civil penalty of **THIRTY-EIGHT THOUSAND, EIGHT HUNDRED AND FORTY-SEVEN DOLLARS (\$38,847)**, plus any applicable interest, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: March 30, 2016



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

IN THE MATTER OF:

Eureka Hunter Pipeline, LLC
777 Post Oak Boulevard, Suite 910
Houston, Texas 77056,

Respondent.

Carbide Facility
1 Union Carbide Road
Hastings, West Virginia 26419,

Facility.

)
) **EPA Docket Nos. EPCRA-03-2016-0087;**
) **CAA-03-2016-0087**
)
)
) **Proceedings Pursuant to Sections 312 and 325**
) **of the Emergency Planning and Community**
) **Right-to-Know Act, 42 U.S.C. §§ 11022,**
) **11045, and Sections 112(r) and 113 of the**
) **Clean Air Act, 42 U.S.C. § 7412, 7413,**
) **and 40 C.F.R. § 22.13(b) and 22.18(b)**
)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via overnight mail

Kathy Milenkovski, Esquire
Steptoe & Johnson PLLC
Huntington Center, Suite 2200
41 South High Street, Columbus, OH 43215

MAR 30 2016

Date

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel