



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

December 18, 2014

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

HOVENSA L.L.C.  
One Estate Hope  
Christiansted, St. Croix, U.S.V.I. 00820  
Attn: Brian K. Lever, President and COO

RE: In the Matter of HOVENSA L.L.C., Docket No. CAA-02-2015-1206

Dear Mr. Lever,

Enclosed please find an Administrative Complaint ("Complaint") that the United States Environmental Protection Agency ("EPA") has filed against HOVENSA L.L.C. ("Respondent") under the authority of Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), regarding compliance with the risk management program requirements.

You have the right to formal hearings to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalties proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaints to the Environmental Protection Agency's ("EPA") Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of the Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further

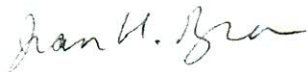
proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issues relating to the alleged violations and the amounts of the proposed penalty. EPA encourages all parties against whom it files Complaints to pursue the possibility of settlement and to have an informal conferences with EPA. However, requests for informal conferences *do not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed with this letter is a copy of the June 2012 Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F. R. Part 68. Also enclosed is a copy of the "Consolidated Rules of Practice," which govern these proceedings.

If you have any questions or wish to schedule an informal settlement conference, please contact me at (212) 637-3164, or at my address, as listed in the Complaint, or by email to [regna.jean@epa.gov](mailto:regna.jean@epa.gov).

Sincerely yours,



Jean H. Regna  
Assistant Regional Counsel  
Office of Regional Counsel

Enclosures

cc: Karen Maples, Regional Hearing Clerk  
Franklin Quow, Esq., (by electronic mail)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency-Reg 2  
2014 DEC 18 PM 5:29

REGIONAL HEARING  
CLERK

In the Matter of

HOVENSA L.L.C.,  
One Estate Hope,  
Christiansted, St. Croix, U.S.V.I.,

Respondent.

Docket No. CAA-02-2015-1206

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

**ADMINISTRATIVE COMPLAINT**

**I. JURISDICTION**

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

**II. APPLICABLE STATUTES AND REGULATIONS**

2. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances. EPA promulgated the regulations at 40 C.F.R. Part 68 in order to implement Section 112(r)(7) of the CAA. These regulations 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.

3. Sections 112(r)(3) and (5) of the CAA, 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.

4. Pursuant to Section 112(r)(7) of the CAA, 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 at a stationary source above the threshold quantity, whichever is latest.

5. The regulations 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 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) (which includes NAICS code 32411), or the process is subject to the United States Occupational Safety and Health Administration (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119.

6. The regulations 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 (as provided in 40 C.F.R. § 68.15), the implementation of prevention program requirements (as provided in 40 C.F.R. §§ 68.65-68.87), and the development and implementation of an emergency response program (pursuant to 40 C.F.R. §§ 68.90-68.95).

7. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), EPA and the Department of Justice jointly determined that this case was appropriate for administrative enforcement.

8. 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.”

9. 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 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.

10. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA and set forth in 40 C.F.R. § 68.130.



11. 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.

12. 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.

### **III. GENERAL ALLEGATIONS**

13. Respondent is, and at all times referred to herein was, a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

14. At all times relevant hereto, Respondent is or was the owner and/or operator of the facility located at One Estate Hope, Christiansted, St. Croix, U.S. Virgin Islands (the “Facility”).

15. At all times relevant hereto, the Facility operated as a petroleum refinery.

16. The Facility is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA and as that term is defined at 40 C.F.R. § 68.3.

17. On or about June 18, 1999, Respondent submitted an initial RMP to EPA for the Facility, and thereafter updated RMP submissions were made to EPA regarding the Facility, including an updated RMP submitted on or about July 8, 2008 (“July 2008 RMP”).

18. The July 2008 RMP was the most recent RMP submission at the time of the EPA inspection described below.

19. The July 2008 RMP submitted by Respondent listed 40 covered processes and identified them as subject to Program 3 requirements.

20. The process chemicals listed in Respondent’s July 2008 RMP submission mostly include flammable mixtures of regulated substances, and also anhydrous ammonia. The flammable mixture chemical components for the flammable mixtures identified in Respondent’s July 2008 RMP include butane, 1-butene, 2-butene, 2-butene-cis, 2-butene-trans [2-butene, (E)], cyclopropane, ethane, ethylene [ethene], hydrogen, isobutane [propane, 2-methyl], isopentane [butane, 2-methyl-], methane, pentane, 1-pentene, propane, and propylene [1-propene].

21. Anhydrous ammonia, butane, 1-butene, 2-butene, 2-butene-cis, 2-butene-trans [2-butene, (E)], cyclopropane, ethane, ethylene [ethene], hydrogen, isobutane [propane, 2-methyl], isopentane [butane, 2-methyl-], methane, pentane, 1-pentene, propane, and propylene [1-propene] are regulated substances pursuant to Section 112(r)(2) and (3) of the CAA and 40 C.F.R. § 68.3.

22. The threshold quantity for each of the regulated substances listed in paragraphs 20 and 21, pursuant to 40 C.F.R. § 68.130, is 10,000 pounds.



23. At all times relevant hereto, regulated substances were present in processes at the Facility in quantities exceeding the threshold quantities.

24. At all times relevant hereto, the Facility's covered processes were in NAICS code 32411, as identified in the July 2008 RMP. NAICS code 32411 is one of the NAICS codes specified in the Program 3 eligibility requirements at 40 C.F.R. § 68.10(d)(1), and is the code for petroleum refineries.

25. At the time of the Inspection, the Facility included processes subject to Program 3 requirements pursuant to 40 C.F.R. § 68.10(d). The Facility has processes that do not meet the requirements set forth in 40 C.F.R. § 68.10(b) for Program 1 processes, since identified toxic and flammable worst case releases would impact public receptors, the Facility's processes were subject to OSHA's Process Safety Management standards found at 29 C.F.R. § 1910.119, and the Facility's processes were classified under the 32411 NAICS code.

26. At all times relevant hereto, the following processes at the Facility were covered processes, were portions of covered processes, or contained covered processes, subject to Program 3 requirements: the No. 2 Distillate Unifier process; the Fluid Catalytic Cracking unit process; the Delayed Coker Unit process; and the No. 4 Distillate Desulfurizer process.

#### **Incidents and Releases at and from the Facility**

27. EPA staff have been present in St. Croix and at the Facility in response to incidents and releases at and from the Facility, including releases and incidents involving covered processes and regulated substances, due to equipment failures and/or employee errors. EPA staff investigated such incidents and releases, including those identified below. EPA's activities included evaluation of the causes and results of incidents and releases, and oversight of sampling and cleanup activities by Respondent in response to releases and incidents. Respondent's activities in response to such incidents and releases included, but were not limited to, sampling and cleanup activities in surrounding residential neighborhoods, including sampling cisterns, providing water for impacted residents, cleaning roofs and cisterns, and washing cars.

28. There was an incident at the Facility on or about September 19, 2010, in which there was a release involving the No. 2 Distillate Unifier covered process. Equipment failure resulted in a release of vacuum gas oil, hydrogen sulfide, and hydrogen into the atmosphere. Hydrogen and hydrogen sulfide are regulated substances. The September 19, 2010 release caused substantial off-site property impacts.

29. There were two incidents at the Facility on or about September 30, 2010 involving the Fluid Catalytic Cracking Unit process, which was a covered process. Equipment, including electrical equipment, failed or malfunctioned, resulted in heavy slurry oil being combusted in the flaring systems, and also the release of gases to a flare at the Facility. The releases, in the form of heavy black smoke, lasted for approximately 5 hours and caused substantial off-site property impacts.



30. There was an incident at the Facility on or about October 6, 2010, involving the Fluid Catalytic Cracking Wet Gas Scrubber, which is part of a covered process. In a letter submitted to the U.S. Virgin Islands Department of Planning and Natural Resources, Respondent explained that equipment malfunction resulted in a diversion of hydrocarbons from the reactor into the regenerator. The resulting incomplete combustion of hydrocarbon in the regenerator caused discoloration of the Wet Gas Scrubber plume and an opacity exceedance.

31. There was an incident at the Facility on or about December 9, 2010 in which there was a release of hydrocarbons and hydrogen sulfide from the Delayed Coker Unit, a covered process, due to a combination of operator error, and equipment failure or malfunction. As a result of the December 9, 2010 release, the local high school was impacted, and the school administrator evacuated the campus. A number of people sought medical attention at a local hospital and were treated for symptoms allegedly related to this incident. The December 9, 2010 release resulted in substantial off-site property impacts, including to the high school and residential neighborhoods.

32. There was an incident at the Facility on or about February 11, 2011, in which there was a fire at the No. 4 Distillate Desulfurizer, a covered process. The fire resulted from work being performed by a contractor on equipment in the covered process. The fire created a heavy smoke plume, which affected areas outside of the Facility, and hydrogen sulfide, a regulated substance, was released. The fire caused substantial damage to the Facility, and resulted in the temporary closure of roads.

#### **EPA Inspection**

33. EPA sent Respondent a letter dated January 4, 2011, notifying it of EPA's plan to conduct an inspection at the Facility. The letter also requested, pursuant to Section 114 of the CAA, that Respondent provide certain documents to EPA prior to the inspection, and that certain documents be available at the time of the EPA inspection.

34. From January 24 - 28, 2011, EPA inspectors conducted a compliance evaluation at the Facility (the "Inspection") to determine, among other things, Respondent's compliance with certain requirements of the CAA. The Inspection included discussions with Facility representatives concerning the Facility's covered processes, risk management program, and releases and incidents at the Facility, and EPA inspectors toured the Facility in the presence of Respondent's representatives.

35. As part of EPA's Inspection and investigation, EPA inspectors requested and reviewed documentation regarding Respondent's risk management program and covered processes at the Facility, including but not limited to hazard assessment documentation, process safety information, and process hazard analysis documentation. EPA inspectors also requested and reviewed documentation regarding the incidents described above, including Respondent's incident investigation reports.



36. The Inspection mainly focused on process units at the Facility that were involved in releases and incidents that occurred prior to the Inspection. EPA's investigation also addressed the February 11, 2011 fire at the Facility, which occurred just after the Inspection.

37. As a result of EPA's Inspection and investigation, on August 24, 2011, EPA issued an administrative compliance order to Respondent pursuant to Section 113(a)(3)(B) of the CAA (the "Order"), which found that Respondent failed to comply with the requirements of 40 C.F.R. Part 68, and that such failures constituted violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). The Order required Respondent to take certain actions at the Facility to come into compliance with the requirements of Section 112(r)(7) of the CAA and 40 C.F.R. Part 68. Following the issuance of the Order, Respondent began complying with the requirements of the Order.

38. EPA's investigation of the Facility and incidents and releases covered the time period from the September 19, 2010 incident and release through the time of the issuance of the Order (the "EPA Investigation"). The EPA Investigation included evaluation of information received from Respondent both before and after the Inspection.

39. In January 2012, Respondent began shutting down the refining operations at the Facility. By letter dated February 22, 2012, Respondent informed EPA that the shutdown of all of its refinery processes had been completed, and requested discontinuance of further obligations to implement the requirements of the Order. Respondent's letter stated that the Facility would continue to operate as an oil storage terminal, with the capacity to store crude oil and petroleum products, and that the only currently remaining covered process in operation at the Facility is the propane loading rack and associated systems.

40. By letter dated March 28, 2012, EPA requested that Respondent submit the final report required under the Order. Respondent submitted this document to EPA by letter dated April 27, 2012.

#### **IV. FINDINGS OF VIOLATIONS**

##### **Count 1: Failure to Comply with Hazard Assessment Requirements**

41. The allegations in paragraphs 1 through 40 are hereby realleged and incorporated herein by reference.

42. 40 C.F.R. § 68.25(a)(2)(ii) requires the owner or operator of a stationary source with processes subject to Program 2 or Program 3 requirements to analyze and report in the RMP one worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in 40 C.F.R. § 68.22(a) resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions defined in 40 C.F.R. § 68.22. 40 C.F.R. § 68.25(a)(2)(iii) requires the owner or operator of a stationary source with processes subject to Program 2 or Program 3 requirements to analyze and report in the RMP additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those



potentially affected by the worst-case release scenario developed under 40 C.F.R. § 68.25(a)(2)(i) or (ii).

43. 40 C.F.R. § 68.39(a) requires, among other things, that the owner or operator shall maintain the following records on the offsite consequence analyses: for worst-case scenarios, a description of the vessel or pipeline and substance selected as the worst case, assumptions and parameters used, and the rationale for selection. 40 C.F.R. § 68.39(e) requires that the owner or operator shall also maintain the following records on the offsite consequence analyses: data used to estimate population and environmental receptors potentially affected.

44. At the time of the EPA Investigation, Respondent did not maintain documentation regarding the rationale for the selection of worst-case scenarios, as required by 40 C.F.R. § 68.39(a); and Respondent did not maintain documentation regarding data used to estimate population and environmental receptors potentially affected, as required by 40 C.F.R. § 68.39(e).

45. By failing to maintain documentation required by 40 C.F.R. §§ 68.39(a) and (e), Respondent violated 40 C.F.R. § 68.39 and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

### **Count 2: Failure to Comply with Process Hazard Analysis Requirements**

46. The allegations in paragraphs 1 through 45 are hereby realleged and incorporated herein by reference.

47. Pursuant to 40 C.F.R. § 68.67, the owner or operator of a stationary source with processes subject to Program 3 requirements is required to perform an initial process hazard analysis (“PHA”) pertaining to processes covered by 40 C.F.R. Part 68. The PHA shall identify, evaluate, and control the hazards involved in the process. Pursuant to 40 C.F.R. § 68.67(c)(1), the PHA shall address the hazards of the process. Pursuant to 40 C.F.R. § 68.67(c)(7), the PHA shall address a qualitative evaluation of a range of the possible safety and health effects of failure of controls. Pursuant to 40 C.F.R. § 68.67(d), the PHA is required to be performed by a team with expertise in engineering and process operations. Pursuant to 40 C.F.R. § 68.67(e), the owner or operator is required to establish a system to promptly address the PHA team’s findings and recommendations, assure that the recommendations are resolved in a timely manner and that the resolution is documented, document what actions are to be taken; complete actions as soon as possible, develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and may be affected by the recommendations or actions. Pursuant to 40 C.F.R. § 68.67(f), at least every five years after the completion of the initial PHA, the PHA shall be updated and revalidated by a team meeting the requirements in 40 C.F.R. § 68.67(d), to assure that the PHA is consistent with the current process.

48. At the time of the EPA Investigation, Respondent had failed to properly identify process hazards when conducting the updated PHAs and revalidations for covered processes at the Facility subject to Program 3 requirements, as required by 40 C.F.R. § 68.67(c)(1); Respondent failed to adequately evaluate the range of the possible safety and health effects of failure of controls when conducting the updated PHAs and revalidations, as required by 40



C.F.R. § 68.67(c)(7); Respondent failed to establish a system to promptly address the PHA team's findings and recommendations for updated PHAs and revalidations, as required by 40 C.F.R. Part 68.67(e); Respondent failed to assure that the PHA team's recommendations were resolved in a timely manner, as required by 40 C.F.R. Part 68.67(e); and for actions which were to be taken pursuant to the requirements of this section, Respondent failed to complete such actions as soon as possible, as required by 40 C.F.R. § 68.67(e).

49. By failing to properly identify process hazards when conducting updated PHAs and revalidations, failing to adequately evaluate the range of the possible safety and health effects of failure of controls when conducting updated PHAs and revalidations, failing to establish a system to promptly address the PHA team's findings and recommendations, failing to assure that the PHA team's recommendations were resolved in a timely manner, and failing to complete actions as soon as possible, Respondent violated 40 C.F.R. § 68.67 and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

### **Count 3: Failure to Comply with Operating Procedures Requirements**

50. The allegations in paragraphs 1 through 49 are hereby realleged and incorporated herein by reference.

51. Under 40 C.F.R. § 68.69, the owner or operator of a stationary source with processes subject to Program 3 requirements must compile written operating procedures that provide clear instruction for safely conducting activities involved in each covered process consistent with the process safety information. The operating procedures are required to address at the least the following elements: steps of each operating phase; operating limits; safety and health considerations; and safety systems and their functions.

52. At the time of the EPA Investigation, Respondent had failed to: develop and/or implement all necessary written operating procedures for safely conducting activities involved in covered processes at the Facility subject to Program 3 requirements, pursuant to the requirements of 40 C.F.R. § 68.69(a) and which addressed all required elements, including emergency operations, safety systems and their functions, and consequences of deviation. At the time of the EPA Investigation, Respondent also failed to: annually certify that all written operating procedures for safely conducting activities involved in each covered process are current and accurate, as required by 40 C.F.R. § 68.69(c); and develop and/or implement safe work practices to provide for the control of hazards during operations, including employees and contractors, pursuant to the requirements of 40 C.F.R. § 68.69(d).

53. Respondent violated 40 C.F.R. § 68.69 and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), by failing to develop and/or implement written operating procedures for safely conducting activities involved in covered processes, failing to annually certify that all written operating procedures for safely conducting activities involved in each covered process are current and accurate, and failing to develop and/or implement safe work practices to provide for the control of hazards during operations, including employees and contractors.



#### **Count 4: Failure to Comply with Training Requirements**

54. The allegations in paragraphs 1 through 53 are hereby realleged and incorporated herein by reference.

55. Pursuant to 40 C.F.R. § 68.71(a), the owner or operator of a stationary source with processes subject to Program 3 requirements must train each employee presently involved in operating a process, and each employee before being involved in a newly assigned process, in an overview of the process and in the operating procedures as specified in 40 C.F.R. § 68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. Pursuant to 40 C.F.R. § 68.71(b), the owner or operator of a stationary source with processes subject to Program 3 requirements provide refresher training at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.

56. At the time of the EPA Investigation, Respondent had failed to adequately train employees in the operating procedures regarding covered processes at the Facility subject to Program 3 requirements, pursuant to the requirements of 40 C.F.R. § 68.71(a) and/or (b), and failed to include in such training adequate information regarding specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

57. Respondent violated 40 C.F.R. § 68.71 and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), by failing to adequately train operators in an overview of the process and in the operating procedures as specified in 40 C.F.R. § 68.69, and by failing to include in such training adequate information regarding specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

#### **Count 5: Failure to Comply with Mechanical Integrity Requirements**

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

59. Under 40 C.F.R. § 68.73, the owner or operator of a stationary source with processes subject to Program 3 requirements must establish and implement written procedures to maintain the ongoing integrity of process equipment, ensure that inspections and testing procedures in accordance with recognized and generally accepted good engineering practices are performed on all process equipment, document each inspection and test performed on process equipment, and correct any deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner.

60. At the time of the EPA Investigation, Respondent had failed to establish and implement all necessary written procedures to maintain the ongoing integrity of process equipment for covered processes at the Facility subject to Program 3 requirements, as required by 40 C.F.R. § 68.73(b). Respondent failed to: perform all necessary inspections and tests on process equipment, pursuant to the requirements of 40 C.F.R. § 68.73(d); follow recognized and



generally accepted good engineering practices regarding equipment in the covered processes, as required by 40 C.F.R. § 68.73(d)(2); ensure proper frequency inspections and tests on equipment in covered processes pursuant to the requirements of 40 C.F.R. § 68.73(d)(3); document the results of inspections or tests on process equipment in covered processes, pursuant to the requirements of 40 C.F.R. § 68.73(d)(4); and correct deficiencies in equipment that were outside acceptable limits before further use or in a safe and timely manner with necessary means taken to assure safe operation, as required by 40 C.F.R. § 68.73(e).

61. Accordingly, Respondent violated 40 C.F.R. § 68.73 and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), by failing to: implement written procedures to maintain the ongoing integrity of process equipment; perform all necessary inspections and tests on process equipment; follow recognized and generally accepted good engineering practices regarding process equipment; ensure proper frequency inspections and tests on process equipment; document the results of inspections or tests on process equipment; and correct deficiencies in equipment that were outside acceptable limits before further use or in a safe and timely manner with necessary means taken to assure safe operation.

**Count 6: Failure to Comply with Management of Change and Pre-Start-Up Review Requirements**

62. The allegations in paragraphs 1 through 61 are hereby realleged and incorporated herein by reference.

63. 40 C.F.R. § 68.75 provides that the owner or operator of a stationary source with processes subject to Program 3 requirements shall establish and implement written procedures to manage changes (except for replacements in kind, as defined in 40 C.F.R. § 68.3) to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process. The procedures shall assure that owner or operator has considered the technical basis for the proposed change, the impact of the change on health and safety, modifications to operating procedures, necessary time period for the change, and authorization requirements for the proposed change. The change may result in revisions to training, process safety information, or operating procedures. If the change is significant enough to require a change in the process safety information, the owner or operator must also comply with the pre-startup review procedures of 40 C.F.R. § 68.77.

64. At the time of the EPA Investigation, Respondent had failed to implement written procedures to manage changes to equipment in covered processes at the Facility subject to Program 3 requirements pursuant to the requirements of 40 C.F.R. § 68.75(a), in that it failed to comply with management of change requirements for changes to process equipment; failed to conduct a proper safety and health evaluation regarding a change to a covered process pursuant to the requirements of 40 C.F.R. § 68.75(b)(2); and failed to adequately train employees whose job tasks would be affected by a change in the process in the change prior to start-up of the process or affected part of the process, pursuant to the requirements of 40 C.F.R. § 68.75(c). At the time of the EPA Investigation, Respondent also failed to follow the Facility's Pre-Startup Safety Review procedure regarding a start-up following a change to a covered process, pursuant to the requirements of 40 C.F.R. § 68.77.



65. Accordingly, Respondent violated 40 C.F.R. §§ 68.75 and 68.77 and CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), by failing to comply with management of change and pre-startup review requirements.

**Count 7: Failure to Comply with Compliance Audit and Incident Investigation Requirements**

66. The allegations in paragraphs 1 through 65 are hereby realleged and incorporated herein by reference.

67. Under 40 C.F.R. § 68.79, the owner or operator of a stationary source with processes subject to Program 3 requirements shall conduct a compliance audit at least every three years and certify that they have evaluated compliance with the provisions of 40 C.F.R. Subpart D (Program 3 Prevention Program) at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed. Pursuant to 40 C.F.R. § 68.79(d), the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

68. Under 40 C.F.R. § 68.81, the owner or operator of a stationary source with processes subject to Program 3 requirements, shall investigate each incident which resulted in, or could reasonably result in, a catastrophic release of a regulated substance. Pursuant to 40 C.F.R. § 68.81(e), the owner or operator shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

69. At the time of the EPA Investigation, Respondent had performed compliance audits and incidents investigations on covered processes subject to Program 3 requirements, but had failed to: promptly implement compliance audit findings and recommendations, as required by 40 C.F.R. § 68.79(d); and establish a system to promptly address and resolve incident report findings and recommendations, as required by 40 C.F.R. § 68.81(e), as incident report findings and recommendations were not promptly addressed and resolved.

70. Accordingly, Respondent violated 40 C.F.R. §§ 68.79 and 68.81 and CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), by failing to comply with compliance audit and incident investigation requirements.

**Count 8: Failure to Comply with Contractor Safety Requirements**

71. The allegations in paragraphs 1 through 70 are hereby realleged and incorporated herein by reference.

72. Under 40 C.F.R. § 68.87(b)(1), the owner or operator of a stationary source with processes subject to Program 3 requirements is required to obtain and evaluate information regarding the contract owner and operator's safety performance and programs when selecting contractors who perform maintenance, turnaround, major renovation, or specialty work on or adjacent to a covered process. 40 C.F.R. § 68.87(b)(4) requires the owner or operator to develop



and implement safe work practices consistent with 40 C.F.R. § 68.69(d) (Operating Procedures), to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas.

73. At the time of the EPA Investigation, Respondent had failed to comply with requirements of 40 C.F.R. §§ 68.87(b)(1) and (4), in that Respondent failed to obtain and evaluate information regarding the contract owner and operator's safety performance and programs, and failed to develop and implement safe work practices, consistent with 49 C.F.R. § 68.69(d), to control the entrance, presence, and exit of contract employees in covered processes.

74. Accordingly, Respondent failed to comply with the contractor requirements, in violation of 40 C.F.R. § 68.87 and CAA Section 112(r)(7).

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

## **V. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule and 2013 Penalty Inflation Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*, provides for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$37,500 per day for violations of the CAA occurring after January 12, 2009. This amount is subject to revision under federal law and regulation. Civil penalties under Section 113 of the CAA may be assessed by Administrative Order. On the basis of the violations of the CAA described above, Complainant alleges that Respondent is subject to penalties for violating Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

In determining the amount of any penalty to be assessed for the CAA violations alleged above, pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA will take into account the size of the business, the economic impact of the penalty on the business, Respondent's prior compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of any penalties previously assessed for the same violation, any economic benefit or savings accrued to Respondent resulting from the violation, and the seriousness of the violation. In assessing this penalty sought in this Complaint, Complainant has taken into account the particular facts and circumstances of this matter, in accordance with EPA's Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68, dated June 2012 (the "CAA Penalty Policy"). A copy of the CAA Penalty Policy is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case. A Penalty Calculation Worksheet which shows how the proposed penalty was calculated is included as Attachment 1.



In accordance with Section 113(d) of the CAA, 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 \$115,000 against Respondent.

Payment of a civil penalty shall not affect Respondent's ongoing obligation to comply with the CAA and other applicable federal, Commonwealth, 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.

### **A. 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:

Karen Maples  
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:

Jean H. Regna  
Assistant Regional Counsel  
New York/Caribbean Superfund Branch  
Office of Regional Counsel

U.S. Environmental Protection Agency  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007

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 the 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.

#### **B. 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 CAA 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 this Complaint. 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**

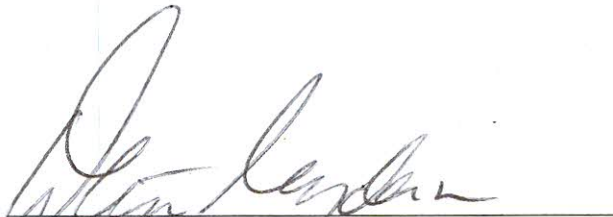
Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address provided in Section VI.A. above), a copy of the check or other instrument 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:



US 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: Dec. 18, 2014



Walter Mugdan, Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866