



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

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September 28, 2012

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: In the matter of JP Lillis Enterprises, Inc. (dba
Cape Cod Ice), Docket No. CAA-01-2012-0116

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

Laura J. Berry
Enforcement Counsel

Enclosures

cc: Joseph Lillis, JP Lillis Enterprises, Inc. (dba Cape Cod Ice)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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_____))
IN THE MATTER OF))
))
JP LILLIS ENTERPRISES, INC.))
D/B/A CAPE COD ICE))
))
7 Jan Sebastian Drive))
Sandwich, MA 02563))
))
Respondent))
))
Proceeding under Section 113(d) of))
the Clean Air Act, 42 U.S.C. § 7413(d)))
_____)

Docket No. CAA-01-2012-0116

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency Region 1 (“EPA”) issues this administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d). This action is subject to 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. The authority to issue this Complaint has been delegated to the Director of the Office of Environmental Stewardship, Region 1 (“Complainant”).

2. This Complaint alleges that JP Lillis Enterprises, Inc. d/b/a Cape Cod Ice (“JP” or “Respondent”) violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which imposes a general duty on owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances 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 that do occur, with regard to preventing the release of

anhydrous ammonia at a ice manufacturing facility and cold storage warehouse in Sandwich, Massachusetts.

3. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

II. STATUTORY AND REGULATORY AUTHORITY

4. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), 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 Section 654 of Title 29 to (a) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the Clean Air Act is referred to as the "General Duty Clause."

5. As used herein, the term "extremely hazardous substance" means an extremely hazardous substance within the meaning of Section 112(r)(1) of the Clean Air Act, including but not limited to those listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). Such substances include any chemical which may, as a result of short-term exposures because of releases to the air, cause death, injury or property damage due to its toxicity, reactivity, flammability, or corrosivity.

6. The extremely hazardous substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), include, among others, anhydrous ammonia.

7. The term “accidental release” is defined by Section 112(r)(2)(A) of the CAA, 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.

8. The term “regulated substance” is defined as a substance listed under Section 112(r)(2)(B), 42 U.S.C. § 7412(r)(2)(B), and other extremely hazardous substances that are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment, including those listed under Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and in the list promulgated by the Administrator at 40 C.F.R. § 68.130.

9. The term “stationary source” is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

10. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA’s 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. §§ 3701 *et seq.*, provide 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 \$32,500 per day for violations occurring between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for violations occurring after January 12, 2009.

III. GENERAL ALLEGATIONS

11. At all times relevant to the violations alleged herein, Respondent operated a cold storage warehouse and ice manufacturing facility at 7 Jan Sebastian Drive in Sandwich, Massachusetts (the “Facility”).

12. The Facility is located less than 0.2 miles from several residential houses, less than 0.6 miles from a shopping center with a movie theater and several restaurants, and less than 0.7 miles from other retail and office buildings, including a dental office, a hair salon, a bank, a fitness center, an outpatient surgery center, and an outpatient pediatric rehabilitation center.

13. Respondent is a corporation organized under the laws of the Commonwealth of Massachusetts with its principal office located in Sandwich, Massachusetts.

14. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

15. The Facility is a building or structure from which an accidental release may occur and is therefore a "stationary source" as that term is defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

16. At all times relevant to the violations alleged herein, Respondent was the "operator" of the Facility, as that term is defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

17. At all times relevant to the violations alleged herein, Respondent's refrigeration system (the "System") used and stored at least 7,182 pounds of anhydrous ammonia.

18. The Facility was built in 1989, the System was installed in approximately 1993 or 1994, and Respondent became the operator of the Facility starting in 1995.

19. On November 15, 2011, representatives of EPA visited the Facility to assess Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) (the "Inspection").

20. On February 14, 2012, EPA sent Respondent a request for information ("Information Request") pursuant to Section 114 of the CAA, 42 U.S.C. § 7414.

21. On March 9, 2012, Respondent submitted to EPA a response to the Information Request (“March 9th Letter”).

22. According to the March 9th Letter, the Facility’s refrigeration system used approximately 8,500 pounds of anhydrous ammonia as of January 9, 2012.

23. Additional ammonia inventory calculations submitted by Respondent with the March 9th Letter indicate that the Facility’s refrigeration system used approximately 11,733 pounds of anhydrous ammonia in October 2004.

24. Among other things, EPA’s Inspection and a review of information submitted to EPA revealed that, at the time of the Inspection, Respondent:

- a. Did not have critical information about the components of the System that would allow Respondent to adequately maintain and inspect the System’s equipment. For example, Respondents had no refrigeration flow diagrams; information about safe operating parameters; manufacturer’s information and recommendations about the equipment in the System; or information about the codes or standards that applied to the System;
- b. Was not operating and maintaining a mechanical ventilation system for the System’s machinery room, even though one of the recommendations resulting from a hazard analysis conducted by Respondent in July 2006 (the “2006 PHA”) was to “consider installing a better ventilation system in the engine room including a manual ventilation switch;”
- c. Had not established a written mechanical integrity program using sound engineering practices consistent with recognized codes and standards including procedures for the inspection, testing and preventative

maintenance for the System. Respondent's 2006 PHA recognized the need for such a program, as its recommendations included to test and calibrate various components of the System, including the high pressure cutouts, temperature probes, and pressure transducers on all compressors, perform vibration analyses on compressors, replace compressor and condenser relief valves, and improve the mechanical integrity of the evaporative condenser through scheduled inspections, but these recommendations were never addressed;

- d. Was not documenting inspection and testing of the System's piping and equipment, including but not limited to procedures to address when the frequency of inspections need to be increased. For example, EPA observed evidence of mechanical degradation, excessive vibration, and corrosion on the System's piping;
- e. Failed to respond to significant deficiencies in the System. For example, EPA observed that the only ammonia detector present in the engine room was not operational, and much of the System's piping was severely corroded. Respondent's 2006 PHA resulted in recommendations to "consider using Macropoxy paint to coat all piping in the future to prevent corrosion," "consider repairing the bad insulation on the piping that feeds the room evaporators," and "consider testing the ammonia detector and calibrate," but such recommendations were never addressed;
- f. Had not developed and was not using any written operating procedures to control the proper operation of the System;

- g. Had not trained workers in the proper operation of the System, potential hazards, and how to safely respond to process or manufacturing upsets;
- h. Failed to adequately label System components, including but not limited to piping, pipe covering, and valve systems;
- i. Had not adequately addressed the need for ammonia sensors, detectors and associated warning systems. For example, at the time of EPA's Inspection, the only ammonia detector at the Facility was inoperable;
- j. Had not installed an emergency shutdown switch for the System;
- k. Had not assessed the use of, installed, and maintained windsocks to assist emergency responders or evacuating personnel in the event of a release at the Facility; and
- l. Failed to develop an emergency response program, including an emergency action plan and emergency procedures that addresses release scenarios based on hazards associated with the design and operation of the Facility. For example, the emergency plan on file at the Facility was written for Respondent's sister facility located in East Providence, Rhode Island, and did not address specific hazards at the Sandwich Facility (*e.g.*, the plan did not consider the fact that the Sandwich Facility is unstaffed at night, and thus did not address the likely consequences of an accidental release of ammonia at night when the Facility is unmanned).

25. As a result of EPA's Inspection and review of information provided by Respondent, EPA alleges the following violations:

IV. VIOLATIONS

Count 1: Failure to Design and Maintain a Safe Facility

26. The allegations in paragraphs 1 through 25 are hereby realleged and incorporated herein by reference.

27. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances have a general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

Lack of Refrigeration System Documentation

28. As described in paragraph 24.a above, Respondent did not have critical information about the components of the System that would allow Respondent to adequately maintain and inspect the System equipment. For example, Respondents had no refrigeration flow diagrams; information about safe operating parameters; manufacturer's information and recommendations about the equipment; information about the life expectancy of the piping; or information about the codes or standards that applied to the System.

29. The recommended industry practice and standard of care for ammonia refrigeration systems of this size would be to maintain refrigeration system documentation, such as refrigeration flow drawings, equipment lists, and manufacturer's information, to help facility personnel identify hazards posed by the system and maintain the system. See, for example, the International Institute of Ammonia Refrigeration's ("IIAR") *Ammonia Refrigeration Management Program*, Section 3; IIAR Bulletin No. 109, *Guidelines for: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System*, Section 4; and IIAR Bulletin No. 110, *Guidelines for: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigeration Systems*, Section 4.

Failure to Provide Mechanical Ventilation in the Machinery Room

30. As described in paragraph 24.b above, Respondent failed to install, operate, and maintain a mechanical ventilation system in the System's machinery room.

31. Unless the machinery room meets the requirements under the National Electric Code for a Class 1, Group D, Division 2 location, the recommended industry practice and standard of care for ammonia refrigeration systems of this size would be to employ mechanical ventilation in the ammonia system's machinery room. During the Inspection, representatives of EPA observed that the Facility did not meet the requirements for the electrical exemption. See, for example, IIAR's *Ammonia Refrigeration Management Program*, Section 3.10; IIAR Bulletin No. 111, *Guidelines for: Ammonia Machinery Room Ventilation*, Section 3; IIAR Bulletin No. 109, *Guidelines for: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System*, Section 4; ANSI/IIAR 2-2008, *American National Standards for Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems*, Section 13.2; and ANSI/ASHRAE Standard 15-2007, *Safety Standard for Refrigeration Systems*, Section 8.11.

Lack of Comprehensive Preventative Maintenance Program

32. As described in paragraphs 24.c, 24.d, and 24.e above, Respondent was not employing a comprehensive preventative maintenance program that covered inspection, testing, and maintenance of all system components, including piping, valve systems, and other components, and as a result, Respondent had not addressed significant deficiencies in the safe operation of the System.

33. The recommended industry practice and standard of care for ammonia refrigeration systems of this size would be to employ and document a preventative maintenance program, after identifying all the equipment that is critical to safely operate the System and

determining what tests and inspections should be used to maintain equipment. See, for example, IIAR's *Ammonia Refrigeration Management Program*, Section 5 and Appendix 5.1; IIAR Bulletin No. 109, *IIAR Guidelines for: Minimum Safety Criteria for a Safe Ammonia Refrigeration System*, Sections 4.1.8, 4.1.11, 4.3.5, 4.7.4, 4.9.7, 4.10.1, 4.10.9, and 5; IIAR Bulletin No. 110 *Guidelines for: Startup, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems*, Section 6; IIAR Bulletin No. 111, *Guidelines for: Ammonia Machinery Room Ventilation*, Section 4; and ANSI/IIAR 2-2008, *American National Standards for Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems*, Section 13.2.2.

Failure to Develop Operating Procedures

34. As described in paragraph 24.f above, Respondent had not developed and was not using any written operating procedures to ensure proper operation of the System.

35. The recommended industry practice and standard of care for ammonia refrigeration systems of this size would be to develop and employ written standard operating procedures to be used by operators trained in the proper operation of the ammonia system. See, for example, IIAR's *Ammonia Refrigeration Management Program*, Section 4; and IIAR Bulletin No. 110 *Guidelines for: Startup, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems*, Section 5.2.2.

Failure to Train Employees in the Proper Operation of the System

36. As described in paragraph 24.g above, Respondent had not trained Facility workers in the proper operation of the System, potential hazards, and how to safely respond to process or manufacturing upsets.

37. The recommended industry practice and standard of care for ammonia refrigeration systems of this size would be to train all employees involved in operating the ammonia system, involved in maintaining the ongoing integrity of the equipment, and involved in the emergency response plan. See, for example, IIAR's *Ammonia Refrigeration Management Program*, Section 9 and Appendix 9.2; and IIAR Bulletin No. 110 *Guidelines for: Startup, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems*, Section 5.2.3.

Inadequately Labeled System Components

38. As described in paragraph 24.h above, at the time of EPA's Inspection, Respondent failed to adequately label many of the System's components, including but not limited to piping, pipe covering, and valve systems.

39. The recommended industry practice and standard of care for ammonia refrigeration systems of this size would be to label all system components. See, for example, the IIAR's *Ammonia Refrigeration Management Program*, Section 4.2; IIAR Bulletin No. 109, *Guidelines for: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System*, Section 4.7.6; IIAR Bulletin No. 112, *Guidelines for: Ammonia Machinery Room Design*, Section 4.3.f; IIAR Bulletin No. 114, *Identification of Ammonia Refrigeration Piping and System Components*; ANSI/IIAR 2-2008, *American National Standards for Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems*, Sections 6-9, 10.5; and ANSI/ASHRAE Standard 15-2007, *Safety Standard for Refrigeration Systems*, Section 11.2.2.

Failure to Adequately Address the Need for Ammonia Detectors and Warning Systems

40. As described in paragraph 24.i above, at the time of EPA's Inspection, Respondent had not adequately addressed the need for and use of ammonia sensors, detectors and associated warning systems or maintained the detector that it did have.

41. The recommended industry practice and standard of care for ammonia refrigeration systems would be to install working ammonia detectors in machinery rooms, to connect those detectors to mechanical ventilation, shutdown, and alarm systems, and to regularly test those detectors in order to ensure proper operation. See, for example, IIAR Bulletin No. 111, *Guidelines for: Ammonia Machinery Room Ventilation*, Sections 3.4 and 3.5; ANSI/IIAR 2-2008, *American National Standards for Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems*, Sections 13.1.1.2, 13.2.1.3, 13.2.2, and 13.2.3.1; and ANSI/ASHRAE Standard 15-2007, *Safety Standard for Refrigeration Systems*, Section 8.11.2.1.

Failure to Provide an Emergency Shutdown Switch for the System

42. As described in paragraph 24.j above, Respondent had not installed an emergency shutdown switch for the System.

43. The recommended industry practice and standard of care for ammonia refrigeration systems would be to install, operate, and maintain an emergency shutdown switch for the equipment in the machinery room, for the purpose of shutting the equipment in an emergency. See, for example, IIAR Bulletin No. 111, *Guidelines for: Ammonia Machinery Room Ventilation*, Section 3.5.2; IIAR Bulletin No. 112, *Guidelines for: Ammonia Machinery Room Design*, Section 4.4.c; and ANSI/ASHRAE Standard 15-2007, *Safety Standard for Refrigeration Systems*, Section 8.12.i.

44. Accordingly, by failing to (a) have appropriate refrigeration system documentation, (b) provide mechanical ventilation in the machinery room, (c) develop and employ a comprehensive preventative maintenance program, (d) develop operating procedures, (e) train employees in the proper operation of the System, (f) properly label System components,

(g) provide ammonia detectors and associated warning systems, and (h) provide an emergency shutdown switch for the System, as described in paragraphs 28 through 43, Respondent violated the requirement to design and maintain a safe facility, taking such steps as are necessary to prevent releases, as required under the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 2: Failure to Minimize the Consequences of Accidental Releases That Might Occur

45. The allegations in paragraphs 1 through 44 are hereby realleged and incorporated herein by reference.

46. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances have a general duty to minimize the consequences of any accidental releases of anhydrous ammonia that might occur.

Failure to Develop an Adequate Emergency Response Program

47. As described in paragraphs 24.k and 24.l above, at the time of EPA's Inspection, Respondent had not developed an adequate emergency action plan and emergency response program that specifically addresses release scenarios based on hazards associated with the design and operation of the Facility.

48. The recommended industry practice and standard of care for ammonia refrigeration systems of this size would be to develop an emergency action plan and procedures to respond to accidental ammonia releases and to coordinate that program with off-site emergency responders. See, for example, IIAR's *Ammonia Refrigeration Management Program*, Section 7.

49. Accordingly, by failing to develop an adequate and appropriate emergency response plan based on the specific design and operation of the Facility, as described in

paragraphs 47 and 48, Respondent violated the requirement to minimize the consequences of any accidental releases of anhydrous ammonia that might occur, as required under the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

50. Respondent is therefore subject to an assessment of penalties under Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. Part 19.

51. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended, authorize EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Pursuant to the DCIA, 31 U.S.C. §§ 3701 *et seq.*, and 40 C.F.R. Part 19, violations that occurred between March 15, 2004 and January 12, 2009 are subject to a penalty of up to \$32,500 per day; and violations that occur after January 12, 2009 are subject to penalties of up to \$37,500 per day of violation.

V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

52. Based on the foregoing allegations and pursuant to the authority of Section 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), as amended, the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. §§ 2461 *et seq.*, the DCIA, 31 U.S.C. §§ 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, Complainant proposes that a Final Order assessing civil penalties be issued against Respondent of up to \$32,500 per day for each day prior to and including January 12, 2009, during which the violations continued, and up to \$37,500 per day for each day after January 12, 2009, during which the violations continued, up to a maximum of \$295,000.

53. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted for inflation by the DCIA and 40 C.F.R. Part 19, prescribes a \$295,000 penalty limit and a twelve-month duration limitation on EPA's authority to initiate an Administrative Penalty Order. However, these limitations may be waived where the Administrator and the Attorney General jointly determine

that a matter involving a larger penalty or a longer period of violation is appropriate for an administrative penalty action. EPA and the Department of Justice have jointly determined that an administrative penalty action is appropriate in this case.

54. EPA is seeking a penalty from Respondent of up to \$32,500 per day for each day prior to and including January 12, 2009, during which the violations continued, and up to \$37,500 per day for each day thereafter, for the duration of Respondent's violation, which was for a total of up to 1,825 days, based on at least five years of noncompliance, up to a maximum of \$295,000.

55. The violations alleged in this Complaint, Respondent's failure to design and maintain a safe facility, taking such steps as are necessary to prevent releases and to minimize the consequences of any accidental releases of anhydrous ammonia that might occur, represent substantial violations of the CAA because of the potential environmental consequences of a release of anhydrous ammonia, which is a very dangerous chemical. The Facility failed to meet basic industry standards of care associated with the operation and maintenance of ammonia refrigeration systems, including the installation of safety systems such as mechanical ventilation, emergency shutdown switches, and alarms actuated by ammonia detectors, developing operating procedures, training employees in the safe operation and maintenance of the system, and preparation of an emergency response program, which had a substantial effect on Respondent's ability to prevent threatened releases of extremely hazardous substances and to minimize the consequences of any such releases. Meeting such industry standards of care helps facility personnel and emergency responders to assess and manage the hazards that are posed by ammonia refrigeration systems so that the threat and impacts of releases are minimized.

56. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty, as required by the Consolidated Rules of Practice, taking 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, and such other matters as justice may require. An appropriate penalty will be derived pursuant to the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012), which takes into account these penalty factors.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

57. Pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Any request for a hearing must be included in Respondent's written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

58. In its Answer, a Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of

that allegation. The Answer must also include the grounds for any defense and the facts the Respondent intends to place at issue.

59. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (ORA18-1)
Boston, MA 02109-3912

Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Laura J. Berry, the attorney assigned to represent EPA and who is designated to receive service in this matter at:

Laura J. Berry
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel: (617) 918-1148

60. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

61. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

VII. INFORMAL SETTLEMENT CONFERENCE

62. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations, the amount of any penalty,

and/or the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

63. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondent or its representative should contact Laura J. Berry, Enforcement Counsel, at (617) 918-1148.

VIII. CONTINUED COMPLIANCE OBLIGATION

64. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with and Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

09/28/12
Date