UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

September 30, 2016

Via Hand Delivery

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

RE: *In the Matter of: ChemArt Company*
Docket Nos. CAA-01-2016-0074, RCRA-01-2016-0075

Dear Ms. Santiago:

I enclose for filing in the above-referenced matter the original and one copy of the Complaint and a Certificate of Service.

Thank you for your assistance.

Sincerely,

William D. Chin

William D. Chin
Enforcement Counsel

Enclosures

cc: Richard E. Beaupre (ChemArt)

In the Matter of: ChemArt Company
Docket Nos. CAA-01-2016-0074, RCRA-01-2016-0075

CERTIFICATE OF SERVICE

I hereby certify that I have caused or will cause the foregoing Complaint to be sent to the following person(s), in the manner stated:

Original and one copy,
By Hand Delivery:

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

One copy, By Certified Mail,
Return Receipt Requested:

Richard E. Beaupre
President
ChemArt Company
11 New England Way
Lincoln, RI 02865

Dated: 9/30/16

William D. Chin

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES04-4)
Boston, MA 02109-3912

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:	)	
	)	Docket Nos.
ChemArt Company	)	CAA-01-2016-0074
11 New England Way	)	RCRA-01-2016-0075
Lincoln, RI 02865	)	
	)	**COMPLAINT AND**
Respondent.	)	**NOTICE OF OPPORTUNITY**
	)	**FOR HEARING**
Proceeding under Section 113(d) of	)	
the Clean Air Act, 42 U.S.C. § 7413(d),	)	
and Section 3008(a) of the Resource	)	
Conservation and Recovery Act,	)	
42 U.S.C. § 6928(a)	)	

COMPLAINT

Introduction

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), and Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), 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 ChemArt Company ("ChemArt" or "Respondent") violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the federal regulations promulgated thereunder, entitled the "Chemical Accident Prevention Provisions" (the "RMP Regulations"), 40 C.F.R. Part 68.

3. This Complaint also alleges that Respondent violated Section 3002 of RCRA, 42 U.S.C. § 6922; the regulations promulgated thereunder found at 40 C.F.R. Part 262; Chapter 23-19.1 of the Rhode Island General Laws; and the implementing regulations promulgated as the Rhode Island Consolidated Rules and Regulations for Hazardous Waste Management, Rules 1.00 through 17.00.

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

Statutory and Regulatory Authority

CAA Authority

5. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. Specifically, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of 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 if accidentally released. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish for each regulated substance the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection and correction of accidental releases of regulated substances. One of the requirements of Section 112(r)(7), 42 U.S.C. § 7412(r)(7), is that owners or operators of certain stationary sources prepare and implement a risk management plan ("RMP") for the source.

6. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r) of the CAA in violation of such regulations.

7. Pursuant to Section 112(r)(7) of the CAA, EPA promulgated the "Chemical Accident Prevention Provisions" (the "RMP Regulations"), which became effective on March 2, 1994. The RMP Regulations are set forth at 40 C.F.R. Part 68.

8. Forty C.F.R. § 68.130 lists the substances regulated under the RMP Regulations and their associated threshold quantities ("RMP Chemicals" or "regulated substances") in accordance with the requirements of Section 112(r)(3) and (7) of the CAA.

9. Each process in which a regulated substance is present in more than its associated threshold quantity is a "covered process" within the meaning of 40 C.F.R. § 68.3, and becomes subject to the requirements for one of three risk management programs. Program 1 is the least comprehensive risk management program, and Program 3 is the most comprehensive.

10. Pursuant to 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 requirements if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is less than the distance to any public receptor. Pursuant to 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 requirements if the process does not meet the eligibility requirements for Program 1 and is either in a specified North American Industry Classification System ("NAICS") code or subject to

the Occupational Safety & Health Administration's ("OSHA's") process safety management ("PSM") standard at 29 C.F.R. § 1910.119.

11. Pursuant to 40 C.F.R. § 68.12, the owner or operator of a stationary source subject to the requirements of the RMP Regulations must submit an RMP to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with the elements of the risk management program to which the source is subject. For example, the RMP for a Program 3 process must document compliance with all of the elements of a Program 3 Risk Management Program, including 40 C.F.R. § 68.12(d) (General Requirements); 40 C.F.R. § 68.15 (RMP Management System); 40 C.F.R. Part 68, Subpart B (Worst-Case Release Scenario Analysis); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

12. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA in amounts up to $37,500 per day for violations occurring on or after January 13, 2009 through November 2, 2015. [For violations that occur after November 2, 2015, further maximum penalty increases for inflation took effect on August 1, 2016, pursuant to the 2015 Federal Civil Penalties Inflation Adjustment Improvement Act (the "2015 Act"), 28 U.S.C. § 2461, Pub. L. 114-74. *See also* 2016 Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43091 (July 1, 2016).]

13. Section 113(d) of the CAA limits EPA's authority to issue administrative penalty orders to matters where the total penalty sought does not exceed $200,000 and

the first date of violation occurred no more than 12 months prior to the initiation of the action, unless the EPA and the U.S. Department of Justice ("DOJ") jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for an administrative penalty action. Pursuant to the DCIA, the 2015 Act, and their implementing regulations, the above-described penalty cap has been raised to $356,312. Although this CAFO alleges violations that commenced more than 12 months ago, EPA and the U.S. Department of Justice have jointly determined that this action is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

RCRA Authority

14. RCRA was enacted on October 21, 1976, and amended thereafter by, among other things, the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). Subchapter III of RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. See 42 U.S.C. §§ 6921-6939e. Pursuant to Subchapter III of RCRA, EPA has promulgated regulations that set forth standards and requirements applicable to generators and transporters of hazardous waste, as well as standards and requirements that are applicable to owners and operators of facilities that treat, store, dispose of hazardous waste. These regulations are codified at 40 C.F.R. Parts 260-271.

15. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when EPA deems the state program to be substantially equivalent to the federal program.

16. On January 30, 1986, EPA granted the State of Rhode Island final authorization to administer its hazardous waste management program in lieu of the

federal hazardous waste management program. See 51 Fed. Reg. 3780 (January 30, 1986). Updates to the Rhode Island hazardous waste management program have been authorized by EPA several times since then, most recently on July 26, 2010, effective September 24, 2010.[1] The authority for the Rhode Island hazardous waste program is set out at Chapter 23-19.1 of the Rhode Island General Laws, with implementing regulations promulgated as the Rhode Island Consolidated Rules and Regulations for Hazardous Waste Management, Rules 1.00 through 17.00 (the "RI Rules").

17. Because EPA has not yet authorized the State of Rhode Island to implement some HSWA portions of the federal RCRA program, there is a dual State/Federal RCRA program in Rhode Island. State law governs the base hazardous waste program, but EPA has exclusive jurisdiction to implement and enforce the HSWA of 1984 requirements for which the State of Rhode Island is not authorized.

18. Pursuant to Sections 3006(g) and 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6926(g) and 6928(a) and (g), EPA may enforce the federally approved State of Rhode Island hazardous waste program, as well as the federal regulations promulgated pursuant to HSWA, by issuing an order assessing a civil penalty for any past or current violation of RCRA and requiring immediate compliance. Section 3006 of RCRA, as amended, provides that, among other things, authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subchapter C of RCRA.

[1] The most recent revision of the RI Rules was issued by the state on January 17, 2014. The 2014 rules, however, have not yet been approved by EPA, and thus are not yet federally enforceable. The RI Rules issued by the state in June 2010 (and authorized by EPA on July 26, 2010), are referenced herein.

19. Section 3008(a) of RCRA provides that upon finding that any person has violated or is violating any requirement of Subchapter C of RCRA, including violations in an authorized state, EPA may issue an order requiring compliance immediately or within a specified time and assessing a civil penalty for any past or current violation. Sections 3008(a) and (g) of RCRA provide that any person who violates any order or requirement of Subchapter C of RCRA shall be liable to the United States for a civil penalty in an amount of up to $25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 et seq., as well as 40 C.F.R. Part 19, the inflation-adjusted civil penalty for a violation of Subchapter III of RCRA is up to $37,500 per day per violation for violations that occurred on or after January 13, 2009 through November 2, 2015. (For violations that occurred after November 2, 2015, further maximum penalty increases for inflation took effect on August 1, 2016, pursuant to the 2015 Act. *See also* 2016 Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43091 (July 1, 2016).)

20. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notice of this action has been given to the State of Rhode Island and Providence Plantations.

Allegations

21. Respondent began operations in 1980, and manufactures decorative metal ornaments, awards and precision components. Respondent's manufacturing process consists of metal etching using ferric chloride in automated etching machines. Chlorine is used in the manufacturing process to regenerate the ferric chloride used for etching.

22. Respondent's operations are located on two separate parcels of land in Lincoln, Rhode Island. One parcel of land, located at 15 New England Way ("Parcel

One"), contains a two-story, 30,000 square foot building that is used for administration, assembly, and products storage. The second parcel, located at 11 New England Way ("Parcel Two"), contains a 15,000 square foot structure that is used for the manufacturing process of Respondent's products (the "Facility"). The Facility contains storage areas for all hazardous chemicals and hazardous waste including chlorine gas, acids, cyanides, caustics, and flammable liquids. The chlorine storage room is located on the eastern end of the Facility and contains four 2,000 pound cylinders of liquefied chlorine gas. Chlorine is added into the etching/manufacturing process by connecting one of the chlorine cylinders in the chlorine storage room to a hard piping system that feeds directly to the automated etching machines.

23. Respondent is a corporation organized under the laws of Rhode Island. As a corporation, Respondent is a "person," as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

24. The Facility is a "stationary source," as defined at Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

25. Respondent is the "owner or operator," as that term is defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

26. As described above in paragraph 22, Respondent stores four 2,000 pound cylinders of chlorine in the chlorine storage room at the Facility.

27. Chlorine is a RMP Chemical listed at 40 C.F.R. § 68.130, with a threshold quantity of 2,500 pounds.

28. Respondent's use of chlorine in its etching/manufacturing process and its storage of four 2,000 pound cylinders of chlorine in the chlorine storage room at the Facility is a "process," as defined by 40 C.F.R. § 68.3.

29. Respondent's use and/or storage of four 2,000 pound cylinders of chlorine (i.e., 8,000 pounds of chlorine) at the Facility is a "covered process," as defined in 40 C.F.R. § 68.3.

30. As the operator of a stationary source that has more than the threshold amount of regulated substance in a covered process, Respondent is subject to the RMP requirements of the RMP Regulations.

31. Pursuant to Subpart B of the RMP Regulations, the worst-case release scenario at the Facility would involve a release of 2,000 pounds of chlorine.

32. The endpoint for a worse-case release of 2,000 pounds of chlorine at the Facility is greater than the distance to a public receptor.

33. Chlorine is subject to OSHA's PSM requirements of 29 C.F.R. § 1910.119.

34. Accordingly, pursuant to 40 C.F.R. § 68.10(a)-(d), Respondent's use and/or storage of chlorine is subject to the requirements of RMP Program 3. The chlorine process is subject to Program 3 because (1) the distance to a toxic or flammable endpoint for a worst-case release of chlorine is more than the distance to a public receptor, making the process ineligible for Program 1; and (2) the process is subject to OSHA's PSM regulations.

35. Respondent submitted its initial RMP for the Facility on November 9, 1999 (the "1999 RMP"), and updated it on June 13, 2006 (the "2006 RMP"). At the time

of the Inspection, the most recent RMP for the Facility was submitted by Respondent on June 13, 2011 (the "2011 RMP"). Subsequent to the Inspection, Respondent updated the RMP for the Facility on June 30, 2015.

36. As a corporation, Respondent is a "person," as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and RI Rule 3.00.

37. The Facility is a "facility," as defined at 40 C.F.R. § 260.10 and RI Rule 3.00.

38. Respondent is the "owner" and/or "operator" of the Facility, as defined at 40 C.F.R. § 260.10.

39. Respondent generates various types of hazardous wastes at the Facility including waste ferric chloride, waste epoxy inks, waste fixer solution, F006 hazardous wastewater treatment sludge, and universal wastes.

40. The largest waste stream generated at the Facility is waste ferric chloride, which, at the time of the violations alleged in this Complaint, Respondent accumulated and stored in a 5,000 gallon hazardous waste tank located in the wastewater treatment area ("WTA") at the Facility.

41. Respondent generates "solid waste," as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10 and 261.2.

42. Respondent generates "waste," as defined in RI Rule 3.00.

43. At least some of the wastes Respondent generates at the Facility are "hazardous wastes," as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. §§ 260.10 and 261.3, and RI Rule 3.00.

44. Respondent is a "generator," as defined in 40 C.F.R. § 260.10 and RI Rule 3.00.

45. On August 8, 1980, Respondent submitted a Notification of Hazardous Waste Activity to EPA.

46. Accordingly, as a generator of hazardous waste, Respondent is subject to RCRA, the federal regulations promulgated at 40 C.F.R. Parts 260-271 and 279, and the RI Rules.

47. On January 20-21, 2015, authorized representatives of EPA conducted an inspection at the Facility to determine its compliance with Section 112(r) of the CAA and with RCRA (the "Inspection").

48. Based on the Inspection, and other information obtained by EPA during and after the Inspection, Complainant has identified the following violations at the Facility:

CAA/RMP Violations

Count 1 – Failure to Perform Proper Worst-Case Scenario Analysis

49. Complainant re-alleges and incorporates by reference paragraphs 1 through 48 of this Complaint.

50. Pursuant to 40 C.F.R. § 68.20, the owner or operator of a stationary source subject to the RMP Regulations shall prepare a worst-case release scenario analysis as provided in 40 C.F.R. § 68.25. In addition, the owner or operator of a Program 3 process must comply with all sections in Subpart B of the RMP Regulations (i.e., 40 C.F.R. §§ 68.20 – 68.42) for the process. Pursuant to 40 C.F.R. § 68.28, the owner or operator

of a Program 3 process shall identify and analyze at least one alternative release scenario for each regulated toxic substance held in a covered process(es).

51. Pursuant to 40 C.F.R. § 68.22, the worst-case release scenario analysis (and the alternative release scenario analysis) must meet certain offsite consequence analysis parameters such as endpoints, wind speed/atmospheric stability, ambient temperature/humidity, and surface roughness (i.e., whether the topography where a facility is located is "urban" or "rural"). (Pursuant to 40 C.F.R. § 68.22(e), "urban" means that there are many obstacles, such as buildings and trees, in the immediate area; "rural" means that there are no buildings in the immediate area and the terrain is generally flat and unobstructed.)

52. Pursuant to 40 C.F.R. § 68.25(a)(2)(i), for toxic substances (such as chlorine) in a Program 3 process, the owner or operator shall analyze and report on one worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint (as provided in Appendix A of the RMP Regulations) resulting from an accidental release of the substance under the worst-case conditions defined at 40 C.F.R. § 68.22.

53. At the time of the Inspection, the chlorine storage room at the Facility contained, among other things, four 2,000 pound cylinders of chlorine.

54. For the worst-case release scenario analysis in the 1999 RMP (as well as in the 2006 RMP and the 2011 RMP), Respondent used the scenario of the release of the entire contents of one 2,000 pound cylinder of chlorine inside the chlorine storage room during delivery in an urban setting. This scenario resulted in a distance to endpoint of less than one mile, potentially impacting a small residential population.

55. Respondent's worst-case release scenario for the Facility, however, did not meet all of the requirements of Subpart B of the RMP Regulations because Respondent should have used: (1) a scenario for a release of chlorine outside of the chlorine storage room during delivery; and (2) a rural setting as one of the parameters for the scenario. (Respondent's alternative release scenario also failed to use a rural setting as one of its parameters.) A worst-case release scenario of a release of 2,000 pounds of chlorine outside of the chlorine storage room during delivery and in a rural setting results in a release of several miles to an endpoint, potentially impacting a much larger residential population than estimated in Respondent's scenario.

56. Accordingly, from at least December 1999 to January 2015, Respondent's failure to prepare a worst-case release scenario (and alternative release scenario) that met all of the requirements of Subpart B of the RMP Regulations violates Section 112(r)(7)(E) of the CAA and Subpart B of the RMP Regulations.

Count 2 – Failure to Perform Proper Process Hazard Analysis

57. Complainant re-alleges and incorporates by reference paragraphs 1 through 56 of this Complaint.

58. Pursuant to 40 C.F.R. §§ 68.12(d)(3) and 68.67(a), the owner or operator of a Program 3 process is required to perform an initial process hazard analysis ("PHA") on covered processes. The PHA shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process.

59. Pursuant to 40 C.F.R. § 68.67(c), the PHA shall identify the hazards of the process, opportunities for equipment malfunction or human error, safeguards that are used or needed, and any steps used or needed to detect releases.

60. Pursuant to 40 C.F.R. § 68.67(e), the owner or operator shall, among other things: (1) establish a system to address the findings and recommendations of the team that performed the PHA; (2) assure that that the recommendations are resolved in a timely manner and that resolution is documented; (3) document what actions are to be taken; (4) and complete actions as soon as possible. Pursuant to 40 C.F.R. § 68.67(f), the PHA shall be updated and revalidated every five years. Pursuant to 40 C.F.R. § 68.67(g), the owner or operator shall retain the documented resolution of these recommendations for the life of the process.

61. At the time of the Inspection, the most recent PHA for the chlorine process at the Facility had been completed in or about March/April 2011 (the "2011 PHA").[2]

62. Prior to the 2011 PHA, Respondent had last completed a PHA on January 18, 2002 (the "2002 PHA"), which was more than five years prior to the 2011 PHA. At the time of the Inspection, Respondent was not able to provide any documentation regarding the 2002 PHA for review by Complainant's inspectors.

63. At the time of the Inspection, Respondent's 2011 PHA did not identify all possible hazards for the chlorine process at the Facility such as: (a) the rupture of chlorine piping that extends from the chlorine storage into the WTA and the plating room at the Facility; (b) the fall of a full chlorine cylinder from its railing system and subsequent release of chlorine outside of the chlorine storage room; (c) the lack of any staff at the Facility for 12 or more hours per day (i.e., the Facility's chlorine monitoring system was unable to notify someone remotely in the event of a chlorine release during a

[2] Respondent's June 13, 2011 RMP stated that a PHA was performed on April 5, 2011. Respondent's PHA records however indicated that the PHA was performed between March 18, 2011 and March 25, 2011.

time when the Facility was unstaffed); (d) chlorine detectors that only alarm/sound within the Facility (and not outside of the building); and (e) the Facility's lack of any outdoor alarm beacons.

64. At the time of the Inspection, Respondent was not able to provide full documentation regarding the actions taken to address the findings and recommendations made in the 2011 PHA.

65. Accordingly, from at least February 2002 to January 2015, Respondent's failure to: (a) update the 2002 PHA within five years; and (b) retain any documentation regarding the 2002 PHA; (c) identify all possible hazards for the chlorine process at the Facility in the 2011 PHA, and (d) fully document the actions taken address the findings and recommendations made in the 2011 PHA violates Section 112(r)(7)(E) of the CAA and 40 C.F.R. 68.67.

Count 3 – Failure to Comply with Program 3 Operating Procedure Requirements

66. Complainant re-alleges and incorporates by reference Paragraphs 1 through 65 of this Complaint.

67. Pursuant to 40 C.F.R. §§ 68.12(d)(3) and 68.69(a), the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information. The written operating procedures shall address at least the steps for each operating phase (including initial startup, normal operations, normal shutdown, emergency operations, and emergency shutdown), operating limits, safety and health considerations, and safety systems and their functions.

68. Pursuant to 40 C.F.R. § 68.69(c), the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice. Also, the owner or operator shall certify annually that these operating procedures are current and accurate.

69. At the time of the Inspection, while Respondent did have some written operating procedures to control the proper operation of the chlorine process at the Facility (which were developed for the 1999 RMP), Respondent did not have written operating procedures for emergency shutdown of the chlorine process at the Facility.

70. At the time of the Inspection, Respondent had not reviewed the operating procedures for the chlorine process at the Facility as often as necessary to assure that they reflect current operating practice.

71. At the time of the Inspection, Respondent had not certified annually that the operating procedures for the chlorine process at the Facility were current and accurate.

72. Accordingly, from at least December 1999 to January 2015, Respondent's failure to: (a) have written operating procedures for emergency shutdown of the chlorine process at the Facility; (b) review the operating procedures for the chlorine process at the Facility as often as necessary to assure that they reflect current operating practice; and (c) certify annually that the operating procedures for the chlorine process at the Facility were current and accurate violates Section 112(r)(7)(E) of the CAA and 40 C.F.R. § 68.69.

Count 4 – Failure to Comply with Program 3 Training Requirements

73. Complainant re-alleges and incorporates by reference paragraphs 1 through 72 of this Complaint.

74. Pursuant to 40 C.F.R. §§ 68.12(d)(3) and 68.71(a), each employee involved in operating a process shall receive initial training in an overview of the process and in the operating procedures of the process. The training shall include an emphasis on the specific safety and health hazards, emergency operations, and safe work practices applicable to the employee's job tasks. Pursuant to 40 C.F.R. § 68.71(b), refresher training shall be provided at least every three years to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.

75. Pursuant to 40 C.F.R. § 68.71(c), the owner or operator shall ascertain that each employee involved in operating a process has received and understood the provided training. The owner or operator shall also prepare a training record that contains the identity of each employee, the date of the training, and the means used to verify that the employee understood the training.

76. At the time of the Inspection, Facility staff informed the Complainant's inspectors that, dating back to the start of operations of the Facility in the 1980s, the only training on the chlorine process occurred on January 13, 2015 (just prior to the Inspection). In addition, the training for the chlorine process was not complete operator training for the covered process. Furthermore, Facility staff also indicated that there had been no previous chlorine-related safety training conducted other than hazardous waste operations and emergency response ("HAZWOPER") training that had last been completed by five employees in December 2011.

77. At the time of the Inspection, Respondent had not ever ascertained that each employee involved in operating the chlorine process at the Facility had received and understood the training required by 40 C.F.R. § 68.71.

78. At the time of the Inspection, Respondent did not have any records to document that each employee involved in operating the chlorine process at the Facility received and/or understood any initial or refresher training on an overview of the process and in the operating procedures of the process.

79. Accordingly, from at least December 1999 to January 2015, Respondent's failure to: (a) provide each employee involved in operating the chlorine process at the Facility with initial and/or refresher training; (b) ascertain that each employee involved in operating the chlorine process at the Facility had received and understood the training required by 40 C.F.R. § 68.71; and (c) have any records to document that each employee involved in operating the chlorine process at the Facility received and/or understood any initial or refresher training violates Section 112(r)(7)(E) of the CAA and 40 C.F.R. § 68.71.

Count 5 – Failure to Comply with Program 3 Contractor Requirements

80. Complainant re-alleges and incorporates by reference paragraphs 1 through 79 of this Complaint.

81. Pursuant to 40 C.F.R. §§ 68.12(d)(3) and 68.87, the owner or operator must meet certain requirements regarding contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process.

82. Pursuant to 40 C.F.R. § 68.87(b), the owner or operator shall, among other things: (a) obtain and evaluate information regarding the contract owner or operator's

safety performance and programs; (b) inform the contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process; (c) inform the contract owner or operator of the applicable emergency response procedures; (d) develop and implement safe work practices to control the entrance, presence, and exit of the contract employees in covered process areas; and (e) periodically evaluate the contract owner or operator in fulfilling their obligations under 40 C.F.R. § 68.87(c).

83. Pursuant to 40 C.F.R. § 68.87(c), the contract owner or operator shall: (a) assure that each contract employee is trained in the work practices necessary to perform his/her job; (b) assure that each contract employee is instructed in the known potential fire, explosion, or toxic release hazards related to his/her job and the process, and the applicable emergency response procedures; (c) document that each contract employee has received and understood such training; (d) assure that each contract employee follows the safety rules of the stationary source including its safe work practices; and (e) advise the owner or operator of any unique hazards presented by the contract owner or operator's work, or any hazards found by the contract owner or operator's work.

84. At the time of the Inspection, although at least three contractors had worked on or around the chlorine process at the Facility, Respondent did not have any records to document that the contractors were properly trained to work on or around a chlorine gas process and/or were aware of the specific hazards and emergency procedures for the chlorine process at the Facility.

85. At the time of the Inspection, Respondent had not obtained nor evaluated any information regarding any contractors' work practice/process hazards/safety training for each contract employee.

86. Accordingly, from at least December 1999 to January 2015, Respondent's failure to: (a) have any records to document that the contractors were properly trained to work on or around a chlorine gas process and/or were aware of the specific hazards and emergency procedures for the chlorine process at the Facility; and (b) obtain and evaluate information regarding any contractors' work practice/process hazards/safety training for each contract employee violates Section 112(r)(7)(E) of the CAA and 40 C.F.R. § 68.87.

Count 6 – Failure to Have Adequate Emergency Response Program

87. Complainant re-alleges and incorporates by reference paragraphs 1 through 86 of this Complaint.

88. Pursuant to 40 C.F.R. §§ 68.12(d)(4) and 68.90, the owner or operator of a stationary source with Program 3 processes that have regulated toxic substances shall comply with the requirements under 40 C.F.R. § 68.95 for an emergency response program, unless: (a) its employees will not respond to accidental releases of regulated toxic substances; (b) the stationary source is included in the community emergency response plan developed under 42 U.S.C. § 11003; and (c) appropriate measures are in place to notify emergency responders when there is need for a response. *See* 40 C.F.R. § 68.90(b).

89. Pursuant to 40 C.F.R. § 68.95(a), the owner or operator shall develop and implement an emergency response program that shall include: (a) an emergency response plan ("ERP"); (b) procedures for the use, inspection, testing, and maintenance of

emergency response equipment; (c) training for all employees in relevant procedures; and (d) procedures to review and update the ERP to reflect changes at the stationary source to ensure that employees are informed of changes..

90. Pursuant to 40 C.F.R. § 68.95(a)(1), the ERP shall contain at least the following elements: (a) procedures for informing the public and local emergency response agencies about accidental releases; (b) documentation of proper first aid and emergency medical treatment necessary to treat accidental human exposure; and (c) procedures and measures for emergency response after an accidental release of a regulated substance.

91. Pursuant to 40 C.F.R. § 68.95(c), the ERP shall be coordinated with the community emergency response plan developed under 41 U.S.C. 11003. Upon request of the local emergency planning committee or emergency response officials, the owner or operator shall promptly provide to the local emergency response officials information necessary for developing and implementing the ERP.

92. Upon information and belief, at the time of the Inspection, the Facility was not included in a community emergency response plan developed under 42 U.S.C. § 11003. (The local fire department had previously informed facility staff that it would not respond to emergencies in the chlorine storage room, and the LEPC apparently has no records for the Facility.) Thus, Respondent did not qualify for the exception under 40 C.F.R. § 68.90(b), and was required to comply with the requirements under 40 C.F.R. § 68.95 for an emergency response program.

93. At the time of the Inspection, Respondent maintained a document titled "Emergency Response Plan," dated February 1, 2011 (the "Facility ERP").[3]

94. At the time of the Inspection, Respondent was not able to provide any records regarding any outreach or facility tours with Clean Harbors, Inc., (the Facility's emergency response contractor) ("Clean Harbors"), the local fire department, the Local Emergency Planning Committee ("LEPC"), or regional hazardous materials response teams.

95. At the time of the Inspection, Respondent was not able to provide any records regarding any documented drills and/or exercises for the Facility ERP.

96. At the time of the Inspection, Respondent had not provided any emergency response training to the Facility's employees since December 2011. (As described above in paragraph 76, HAZWOPER training had last been completed by five employees in December 2011. Furthermore, HAZWOPER refresher training should be completed on an annual basis.)

97. At the time of the Inspection, the Facility ERP contained information regarding when chlorine detectors at the Facility would sound a warning or alarm that conflicted with observations of Complainant's inspectors. The Facility ERP stated that in the event of a "Leak in Chlorine Storage Room," an alarm would sound at the detection of chlorine at 2 parts per million ("ppm") and that a warning buzzer would sound at 1 ppm. However, at the time of the Inspection, a "sign" (i.e., a hand-written piece of paper) in the chlorine storage room that was taped to the wall directly above the chlorine

[3] The Facility ERP stated, however, that the plan was "intended to satisfy the requirements of 40 CFR Part 355," and did not mention the RMP Requirements at 40 C.F.R. Part 68.

detector, stated that the detector levels were set at ".5 PPM WARNING 1.00 PPM ALARM."

98. Accordingly, from at least February 2011 to January 2015, Respondent's failure to: (a) conduct any outreach or facility tours with Clean Harbors, the local fire department, the LEPC, or regional hazardous materials response teams; (b) conduct any drills and/or exercises for the Facility ERP; (c) provide any emergency response training to the Facility's employees since 2011; and (d) have information in the Facility ERP regarding when chlorine detectors at the Facility would sound a warning or alarm that was consistent with the "sign" in the chlorine storage room violates Section 112(r)(7)(E) of the CAA and 40 C.F.R. § 68.95.

Count 7 – Failure to Comply with Program 3 Compliance Audit Requirements

99. Complainant re-alleges and incorporates by reference paragraphs 1 through 98 of this Complaint.

100. Pursuant to 40 C.F.R. §§ 68.12(d)(3) and 68.79(a), the owner or operator shall certify that they have evaluated compliance with the Program 3 requirements at 40 C.F.R. §§ 68.48-68.87 every three years to verify that the procedures and practices developed are adequate and are being followed.

101. Pursuant to 40 C.F.R. § 68.79(c), a report of the findings of the audit shall be developed. 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.

102. On September 9, 2010, Respondent conducted a compliance audit at the Facility (the "2010 Audit") with the assistance of Capaccio Environmental Engineering,

Inc. ("Capaccio"). The full report of the 2010 Audit contained an extensive table of audit findings and recommendations. Many of the alleged violations of the RMP requirements identified during the Inspection were also identified in the 2010 Audit.

103. At the time of the Inspection, Respondent was not able to provide any records regarding an appropriate response to each of the findings of the 2010 Audit.

104. At the time of the Inspection, Respondent was not able to provide any records documenting that any of the deficiencies identified in the 2010 Audit had been corrected.

105. On May 15, 2014, Respondent conducted a compliance audit at the Facility (the "2014 Audit"). The 2014 Audit, however, did not meet the requirements of 40 C.F.R. § 68.79 because it consisted merely of completing a Program 3 process checklist and did not include a written report with findings and recommendations. Furthermore, the 2014 Audit contained incorrect conclusions regarding the adequacy of the Facility's compliance with Program 3 requirements (e.g., operating procedures, training, mechanical integrity, etc.). In addition, the 2014 Audit was late since it occurred several months after the three-year deadline for Respondent to have conducted a RMP compliance audit subsequent to the 2010 Audit.

106. Accordingly, from at least October 2010 to January 2015, Respondent's failure to: (a) document an appropriate response to each of the findings of the 2010 Audit; (b) document that any of the deficiencies identified in the 2010 Audit had been corrected; (c) conduct the 2014 Audit on time; and (d) develop a written report of the findings of the 2014 Audit violates Section 112(r)(7)(E) of the CAA and 40 C.F.R. § 68.79.

RCRA Violations

Count 8 – Failure to Properly Label Hazardous Waste Tank/Containers

107. Complainant re-alleges and incorporates by reference paragraphs 1 through 106 of this Complaint.

108. Pursuant to RI Rule 5.4.D, a generator must label the side of each hazardous waste tank per 40 C.F.R. § 262.34(a)(3).

109. Pursuant to 40 C.F.R. § 262.34(a)(3), while being accumulated on-site, each tank must be labeled or marked clearly with the words, "Hazardous Waste."

110. Pursuant to RI Rule 5.4.A, a generator must label or mark each container, excluding satellite accumulation (as defined in RI Rule 3.0), with, among other things: the words "Hazardous Waste;" the generator's name and address of the generating facility; the USDOT shipping name and generic names of the principal hazardous waste components; and the EPA or Rhode Island waste code. Pursuant to RI Rules 3.0 and 5.4.C., a generator must label each hazardous waste container in satellite accumulation with the words "Hazardous Waste" and other words that identify the contents of the container.

111. As described above in paragraph 40, at the time of the violations alleged in this Complaint, Respondent accumulated and stored waste ferric chloride in a 5,000 gallon hazardous waste tank (the "HW Tank") located in the WTA at the Facility. At the time of the Inspection, the HW Tank was uncovered, unlabeled, and undated.

112. At the time of the Inspection, there were two open and unlabeled 5-gallon buckets in the WTA at the Facility. According to facility staff, the buckets contained F006 wastewater treatment sludge generated by the Facility's wastewater treatment unit.

113. Accordingly, Respondent's failure to properly label the HW Tank with the words "Hazardous Waste" violates RI Rule 5.4.D and 40 C.F.R. § 262.34(a)(3).

114. Accordingly, Respondent's failure to properly label the two 5-gallon buckets of F006 waste with the words "Hazardous Waste," the chemical or common name of the principle waste components, the generator's name and address of the generating facility, the USDOT shipping name, and the EPA or Rhode Island waste code violates RI Rule 5.4.A. *See also* 40 C.F.R. § 262.34(c)(1)(ii).

Count 9 – Failure to Mark Hazardous Waste Tank/Containers with Accumulation Start Date

115. Complainant re-alleges and incorporates by reference paragraphs 1 through 114 of this Complaint.

116. Pursuant to RI Rule 5.4.D, the generator must label the side of each hazardous waste tank per 40 C.F.R. § 262.34(a)(3), and must record the accumulation start date for each hazardous waste tank.

117. Pursuant to RI Rule 5.2.A, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34.

118. Pursuant to 40 C.F.R. § 262.34(a)(2), each hazardous waste container must be marked with the date that waste accumulation begins. *See also RI Rule 5.4.A.*

119. At the time of the Inspection, the HW Tank in the WTA at the Facility, described above in paragraph 111, was not marked with an accumulation start date.

120. At the time of the Inspection, the two 5-gallon buckets of F006 waste in the WTA at the Facility, described above in paragraph 112, were not marked with an accumulation start date.

121. Accordingly, Respondent's failure to mark the HW Tank with an accumulation start date violates RI Rule 5.4.D.

122. Accordingly, Respondent's failure to mark the two 5-gallon buckets of F006 waste with an accumulation start date violates RI Rule 5.2.A and 40 C.F.R. § 262.34(a)(2). *See also RI Rule 5.4.A.*

Count 10 - Failure to Provide Initial and Annual Hazardous Waste Training

123. Complainant re-alleges and incorporates by reference paragraphs 1 through 122 of this Complaint.

124. Pursuant to RI Rule 5.2.A, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34.

125. Pursuant to 40 C.F.R. § 262.34(a)(4), a generator must comply with, among other requirements, 40 C.F.R. § 265.16.

126. Pursuant to 40 C.F.R. § 265.16(a)(1), employees who manage hazardous wastes must complete a hazardous waste management training program that teaches them to perform their duties in a way that ensures the facility's compliance with RCRA.

127. Pursuant to 40 C.F.R. § 265.16(a)(2), the training program must be directed by a person trained in hazardous waste management procedures and must include instruction which teaches facility personnel hazardous waste management procedures relevant to the positions in which they are employed (i.e., "initial RCRA training").

128. Pursuant to 40 C.F.R. § 265.16(b), employees who manage hazardous waste must successfully complete the program within six months after the date of their

employment, and they must not work in unsupervised positions until they have completed the training requirements.

129. Pursuant to 40 C.F.R. § 265.16(c), employees who manage hazardous wastes must also take part in an annual review of the training (i.e., "annual RCRA training").

130. At the time of the Inspection, at least four employees had hazardous waste management duties at the Facility.

131. At the time of the Inspection. Respondent had not provided initial or annual hazardous waste management training from 2012 through 2014 to the four employees who had hazardous waste management duties at the Facility. At the time of the Inspection, Respondent had records of training for its staff in 2012 and 2013 that focused only on HAZWOPER topics (but not RCRA topics). After the Inspection, Respondent submitted additional records of staff training in 2014. However, this training also focused entirely on HAZWOPER topics.

132. Accordingly, Respondent's failure to provide initial annual hazardous waste management training from 2012 through 2014 to the four employees who had hazardous waste management duties at the Facility violates RI Rule 5.2.A and 40 C.F.R. §§ 262.34(a)(4) and 265.16(a)-(c).

Count 11 - Failure to Maintain Hazardous Waste Management/Training Records

133. Complainant re-alleges and incorporates by reference paragraphs 1 through 132 of this Complaint.

134. Pursuant to RI Rule 5.2.A, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34.

135. Pursuant to 40 C.F.R. § 262.34(a)(4), a generator must comply with, among other requirements, 40 C.F.R. § 265.16.

136. Pursuant to 40 C.F.R. § 265.16(d), an owner or operator must maintain certain documents and records for the hazardous waste training of its staff, including: (1) the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; (2) a written job description for each such position that must include the requisite skill, education, or other qualifications of facility personnel assigned to each position; (3) a written description of the type and amount of introductory and continuing training that will be to each person who manages hazardous wastes; and (4) records that document that the required training or job experience has been given to and completed by facility personnel.

137. As described above in paragraph 131, at the time of the Inspection, Respondent had records of training for its staff in 2012 and 2013 that focused only on HAZWOPER topics (but not RCRA topics). After the Inspection, Respondent submitted additional records of staff training in 2014. However, this training also focused only on HAZWOPER topics.

138. Accordingly, Respondent's failure to maintain the required documents and records for hazardous waste training at the Facility violates RI Rule 5.2.A, and 40 C.F.R. §§ 262.34(a)(4) and 265.16(d).

Count 12 - Failure to Maintain an Adequate Hazardous Waste Contingency Plan

139. Complainant re-alleges and incorporates by reference paragraphs 1 through 138 of this Complaint.

140. Pursuant to RI Rule 5.2.A, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34.

141. Pursuant to 40 C.F.R. § 262.34(a)(4), a generator must comply with, among other requirements, 40 C.F.R. Part 265, Subpart D.

142. Pursuant to 40 C.F.R. § 265.51(a), each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

143. Pursuant to 40 C.F.R. §§ 265.52(c)-(f), the contingency plan shall, among other things, include: arrangements with local police and fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services; an up-to-date list of the names, addresses, and phone numbers of all persons qualified to act as emergency coordinator; an up-to-date list of all emergency equipment at the facility; the location, description, and brief outline of the capability of each type of emergency equipment at the facility; and an evacuation plan for facility personnel (including a description of the signal(s) used to begin an evacuation and evacuation routes).

144. Pursuant to 40 C.F.R. § 265.54(d), the contingency plan must be reviewed, and immediately amended, if necessary, whenever the list of emergency coordinators changes.

145. At the time of the Inspection, Respondent's hazardous waste contingency plan for the Facility had been prepared on June 28, 2010 (the "2010 Contingency Plan").

146. The 2010 Contingency Plan identified Mr. William Thomas as one of the Facility's alternate emergency coordinators. At the time of the Inspection, however, Mr. Thomas was no longer employed at the Facility.

147. At the time of the Inspection, Mr. Thomas Forand was serving as one of the Facility's alternate emergency coordinators. Mr. Forand, however, was not identified as one of the Facility's alternate emergency coordinators in the 2010 Contingency Plan.

148. The 2010 Contingency Plan did not describe the locations of fire extinguishers, pull alarms, and emergency telephones at the Facility.

149. Accordingly, Respondent's failure to: (a) have an up-to-date list of the Facility's emergency coordinators in the 2010 Contingency Plan; (b) have an up-to-date list of the Facility's emergency equipment in the 2010 Contingency Plan; and (c) review and immediately amend the 2010 Contingency Plan as necessary violates RI Rule 5.2.A, which references 40 C.F.R. § 262.34(a)(4), which in turn references 40 C.F.R. Part 265, Subpart D.

Count 13 - Failure to Maintain Spill Control and Emergency Equipment

150. Complainant re-alleges and incorporates by reference paragraphs 1 through 149 of this Complaint.

151. Pursuant to RI Rule 5.2.A, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34.

152. Pursuant to 40 C.F.R. § 262.34(a)(4), a generator must comply with, among other requirements, 40 C.F.R. Part 265, Subpart C.

153. Pursuant to 40 C.F.R. § 265.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

154. Pursuant to 40 C.F.R. § 265.32, all facilities must be equipped with, among other things: (a) an internal communications or alarm system capable of providing immediate emergency instruction to facility personnel; (b) a device (such as a telephone or two-way radio) capable of summoning emergency assistance from local police and fire departments, or state or local emergency response teams; and (c) portable fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment.

155. At the time of the Inspection, Respondent did not have a telephone, any emergency equipment (e.g., fire control, spill control, or decontamination equipment), internal communications or alarm system in the immediate area of the WTA where the HW Tank was located.

156. Accordingly, Respondent's failure to have a telephone, any emergency equipment, or internal communications or alarm system in the immediate area of the

WTA where the HW Tank was located violates RI Rule 5.2.A, 40 C.F.R. § 262.34(a)(4), and 40 C.F.R. Part 265, Subpart C.

Count 14 - Failure to Conduct Adequate Hazardous Waste Tank Inspections

157. Complainant re-alleges and incorporates by reference paragraphs 1 through 156 of this Complaint.

158. Pursuant to RI Rule 5.2.A, a generator may store hazardous waste onsite for 90 days or less without a permit as long as the hazardous waste is managed in accordance with, among other requirements, the requirements of 40 C.F.R. § 262.34(a). Pursuant to 40 C.F.R. § 262.34(a)(ii), a generator that stores hazardous waste in tanks must comply with the applicable requirements of, among other requirements, 40 C.F.R. Part 265, Subpart J.

159. Pursuant to 40 C.F.R. § 265.195(b)(3), an owner or operator must inspect at least once each operating day, the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system to detect erosion or signs of releases of hazardous waste.

160. At the time of the Inspection, there was a build-up of material all around the base of the HW Tank. Facility staff identified the material as spent "speedi-dry" (i.e., an absorbent substance) from the cleanup of prior tank spillage in and around the HW Tank. The amount of built-up speedi-dry around the base of the HW Tank was such that the EPA inspectors were unable to see underneath or all around the base of the tank in order to assess its condition.

161. Accordingly, due to the build-up of speedi-dry around the base of the HW Tank, Respondent was not able to adequately inspect the tank to detect erosion or signs of releases of hazardous waste.

162. Accordingly, Respondent's failure to remove the built-up speedi-dry from around the base of the HW Tank so that Respondent could conduct adequate inspections of the tank violates RI Rule 5.2.A, which references 40 C.F.R. § 262.34(a), which in turn references 40 C.F.R. § 265.195(b)(3).

Proposed Penalties

CAA/RMP Penalty

163. In determining the amount of the penalty to be assessed for the alleged violations in this Complaint, Complainant will take into account the particular facts and circumstances in this case with particular reference to EPA's "Combined Enforcement Response Policy for Clean Air Act Section 112(r)(1), the General Duty Clause, and Clean Air Act Section 112(r)(7), Chemical Accident Prevention Provisions" (June 2012) (the "Penalty Policy"), a copy of which is enclosed with this Complaint, and inflation adjustments thereto. The Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case. Should the Penalty Policy be updated prior to a hearing on the case, Complainant reserves the right to use the new policy and shall provide the updated policy to Respondent.

164. In light of the above-referenced allegations, Complainant seeks to assess civil penalties of up to $37,500 per day of violation for the following CAA violations that occurred on or after January 13, 2009 through November 2, 2015:

(a) One period of violation for Respondent's failure to perform a proper worst-case release scenario (and alternative release scenario) for its chlorine process including 1209 days from October 1, 2011 through at least January 21, 2015.

(b) One period of violation for Respondent's failure to comply with the process hazard analysis requirements for its chlorine process including 1209 days from October 1, 2011 through at least January 21, 2015;

(c) One period of violation for Respondent's failure to comply with Program 3 operating procedure requirements for its chlorine process including 1209 days from October 1, 2011 through at least January 21, 2015;

(d) One period of violation for Respondent's failure to comply with Program 3 training requirements for its chlorine process including 1209 days from October 1, 2011 through at least January 21, 2015;

(e) One period of violation for Respondent's failure to comply with Program 3 contractor requirements for its chlorine process including 1209 days from October 1, 2011 through at least January 21, 2015;

(f) One period of violation for Respondent's failure to have an adequate emergency response program for its chlorine process including 1209 days from October 1, 2011 through at least January 21, 2015; and

(g) One period of violation for Respondent's failure to comply with Program 3 compliance audit requirements for its chlorine process including 1209 days from October 1, 2011 through at least January 21, 2015.

165. These violations are significant because a RMP helps facility personnel and emergency responders to assess and manage the hazards that are posed by chemicals

at a facility so that releases are prevented. Proper hazard analysis, operating procedures, training, preparing contractors to work safely, and conducting regular audits of the risk management program all help prevent releases. Should a chemical release nonetheless occur, the danger associated with such a release can be minimized by understanding the worst-case release zone and conducting proper emergency response planning. Chlorine is an extremely hazardous substance and is highly corrosive and toxic at very low levels. Chlorine irritates the skin and eyes, the inhalation of chlorine vapors is irritating to the respiratory system, and high levels of exposure may cause circulatory collapse and unconsciousness. The CAA penalty for these violations shall not exceed $356,312 without further authorization from the U.S. Department of Justice, in accordance with Section 113(d) of the CAA, the DCIA, the 2015 Act, and their implementing regulations.

RCRA Penalty

166. In determining the amount of any penalty to be assessed for the RCRA violations alleged above, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA will take into account the seriousness of the violations and any good faith efforts to comply with applicable requirements. To assess a penalty for the alleged RCRA violations in this Complaint, Complainant will take into account the particular facts and circumstances of EPA's RCRA Civil Penalty Policy dated June 2003 (the "RCRA Penalty Policy"). A copy of the RCRA Penalty Policy and updated penalty matrices are 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.

167. In light of the above-referenced allegations, Complainant seeks to assess civil penalties of up to $37,500 per day per violation for the following RCRA violations that occurred on or after January 13, 2009 through November 2, 2015 for at least:

(a) One violation by Respondent for failing to properly label: the HW Tank and the two 5-gallon buckets of F006 waste. This violation is significant because Respondent's failure to properly label hazardous waste tanks/containers impairs the ability of inspectors and emergency responders to determine by observation whether the contents are hazardous wastes and if they are, what potential hazard they pose and whether they are being properly managed by the facility.

(b) One violation by Respondent for failing to mark the HW Tank and the two 5-gallon buckets of F006 waste with an accumulation start date. This violation is significant because the failure to mark hazardous waste tanks/containers with the accumulation start date increases the potential that such wastes would be stored for longer than allowed by regulation. The purpose of labeling a container with an accumulation date is to put the facility on notice so that containers of hazardous waste are routinely shipped within the 90 days allowed by regulation. The failure to mark the accumulation date on hazardous waste tanks/containers increases the likelihood that the waste is stored at the facility for longer than 90 days, which increases the likelihood of release caused by a deteriorated container.

(c) Eleven violations by Respondent for failing to provide initial and annual hazardous waste management training from 2012 through 2014 to the four employees

who had hazardous waste management duties at the Facility.[4] This violation is significant because employees who manage hazardous waste as part of their normal job duties must be properly trained and must receive initial and annual refresher training. The purpose of this annual hazardous waste training is to reinforce both good hazardous waste management practices and safe and effective emergency procedures. This training is necessary to reduce the potential for mismanagement of hazardous waste, which might threaten human health or the environment.

(d) One violation by Respondent for failing to maintain hazardous waste management/training records. This violation is significant because the failure to develop and maintain complete records makes it more likely that employees with hazardous waste management responsibilities will not be properly trained, thereby creating a substantial potential for mismanagement of hazardous waste and for a release of, or exposure to hazardous waste. Such failure also prevents inspectors from ensuring that a generator has fully evaluated the degree to which employees are responsible for the management of hazardous wastes generated at the facility and the type and extent of training that they should receive to accomplish these duties.

(e) One violation by Respondent for failing to maintain an adequate hazardous waste contingency plan. This violation is significant because the failure to maintain an adequate contingency plan prevents inspectors from ensuring that designated employees are properly prepared to handle any emergency incidents that may occur in the event of a spill or other hazardous waste-related incident. In addition, the missing

[4] Three employees (Larry Lefebvre, Michael Ryfa, and Tom Forand) did not receive hazardous waste training from 2012 to 2014. One former employee (Bill Thomas) did not receive hazardous waste training in 2012 and 2013.

information in a contingency plan makes it more difficult for inspectors to review a facility's capabilities to respond to an incident. Furthermore, the contingency plan is a document that should be reviewed by all employees, and should include information describing the locations and capabilities of all equipment that may be available to initially respond to an incident. By not including such information, a generator increases the likelihood that an emergency incident may not be responded to in an optimal manner.

(f) One violation by Respondent for Respondent's failure to have a telephone, any emergency equipment, or internal communications or alarm system in the immediate area of the WTA where the HW Tank was located. This violation is significant because the failure to have a telephone in the immediate area where hazardous wastes are stored may delay the ability to alert emergency responders to an unplanned release of hazardous waste. In addition, the lack of any emergency equipment to clean up spills at a hazardous waste storage area may increase the duration and/or severity of an accidental release of hazardous materials..

(g) One violation by Respondent for the failure to remove built-up speedi-dry from the base of the HW Tank so that the tank could be adequately inspected. This violation is significant because the practice of allowing contaminated clean-up debris to build up around the HW Tank increases the likelihood that facility staff or inspectors would not be able to adequately assess the condition of the containment structure, which potentially could lead to the release of hazardous waste into the environment.

NOTICE OF OPPORTUNITY FOR HEARING

168. As provided by Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and Section 3008(b), 42 U.S.C. § 6928(b), and in accordance with 40

C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below in Paragraph 170 within thirty (30) days of receipt of this Complaint.

169. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of Respondent to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments alleged to constitute the grounds of any defense; the facts that Respondent disputes; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

170. The original and one copy of the Answer, any motions or other pleadings filed or made before the Answer is filed, and any Consent Agreement and Final Order settling the case must be sent to the Regional Hearing Clerk at:

Wanda A. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

171. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed

by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which has been provided with the Complaint.

172. After the Answer has been filed, the original and one copy of all other documents filed in this action (except for any Consent Agreement and Final Order settling the case) must be sent to the Headquarters Hearing Clerk, in the following manner:

For U.S. Postal Service mailings:

Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

For UPS, FedEx, DHL or other courier, or personal delivery:

Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., NW
Washington, DC 20460

173. Respondent shall also serve a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to William D. Chin, the attorney assigned to represent Complainant in this matter, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100

Mail Code: OES04-4
Boston, Massachusetts 02109-3912

174. If Respondent fails to file a timely Answer, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under RCRA and the CAA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent, without further proceedings, thirty (30) days after the default order becomes final.

INFORMAL SETTLEMENT CONFERENCE

175. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with Complainant or his designee concerning the violations alleged in this Complaint. Such conference provides Respondent with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. To explore the possibility of settlement, Respondent or Respondent's counsel should contact William D. Chin, Enforcement Counsel, at the address cited above or by calling 617-918-1728. Please note that a request for an informal settlement conference by Respondent does not extend the 30 day time period within which a written Answer must be submitted in order to avoid becoming subject to default.

Susan Studlien
Susan Studlien
Director
Office of Environmental Stewardship
U.S. EPA, Region 1

09/30/2016
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

September 30, 2016

Via Hand Delivery

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

RE: *In the Matter of: ChemArt Company*
Docket Nos. CAA-01-2016-0074, RCRA-01-2016-0075

Dear Ms. Santiago:

I enclose for filing in the above-referenced matter the original and one copy of the Complaint and a Certificate of Service.

Thank you for your assistance.

Sincerely,

William D. Chin

William D. Chin
Enforcement Counsel

Enclosures

cc: Richard E. Beaupre (ChemArt)

In the Matter of: ChemArt Company
Docket Nos. CAA-01-2016-0074, RCRA-01-2016-0075

CERTIFICATE OF SERVICE

I hereby certify that I have caused or will cause the foregoing Complaint to be sent to the following person(s), in the manner stated:

Original and one copy,
By Hand Delivery:

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

One copy, By Certified Mail,
Return Receipt Requested:

Richard E. Beaupre
President
ChemArt Company
11 New England Way
Lincoln, RI 02865

Dated: 9/30/16

William D. Chin

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES04-4)
Boston, MA 02109-3912