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

September 30, 2013

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: Holland Company, Inc.*
Docket No. CAA-01-2013-0045

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: Thomas J. Holland
Louis S. Moore, Esq.

In the Matter of: Holland Company, Inc.
Docket No. CAA-01-2013-0045

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:

Thomas J. Holland
President
Holland Company, Inc.
153 Howland Ave.
Adams, MA 01220

One copy, By Certified Mail,
Return Receipt Requested:

Louis S. Moore, Esq.
Annino Draper & Moore, P.C.
1500 Main Street – Suite 2504
P.O. Box 15428
Springfield, MA 01115-5428

Dated: 9/30/13

William D. Chin

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
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Boston, MA 02109-3912

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:	)	
	)	
Holland Company, Inc.	)	**Docket No.**
153 Howland Avenue	)	**CAA-01-2013-0045**
Adams, MA 01220	)	
	)	**COMPLAINT AND**
Respondent.	)	**NOTICE OF OPPORTUNITY**
	)	**FOR HEARING**
Proceeding under Section 113(d)	)	
of the Clean Air Act, 42 U.S.C. § 7413(d)	)	

COMPLAINT

Introduction

1. The United States Environmental Protection Agency ("EPA"), Region 1 issues this administrative Complaint and Notice of Opportunity for Hearing 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (the "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 notifies Holland Company, Inc. ("Holland" or "Respondent") that Complainant intends to assess civil penalties for Respondent's failure to comply with 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. 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

4. 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) is that owners or operators of certain stationary sources prepare and implement a risk management plan ("RMP") for the source.

5. 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.

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

7. 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.

8. 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.

9. 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 NAICS code or subject to the OSHA process safety management ("PSM") standard at 29 C.F.R. § 1910.119. Forty C.F.R. § 68.10(c) prescribes that a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2 requirements.

10. 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 2 process must document compliance with all of the elements of a Program 2 Risk Management Program, including 40 C.F.R. § 68.12 (General Requirements); 40 C.F.R. § 68.15 (Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-

Site Consequences of a Release); 40 C.F.R. Part 68, Subpart C (Program 2 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

11. 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 $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.

12. 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 and its implementing regulations, the above-described penalty cap has been raised to $295,000. Although this Complaint 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).

General Allegations

13. Respondent is a corporation organized under the laws of the Commonwealth of Massachusetts.

14. As a corporation, Respondent is a "person", as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

15. Respondent operates a facility located at 153 Howland Avenue, Adams, Massachusetts (the "Facility"), where Respondent manufactures chemical products for water treatment and distributes these chemicals, as well as products from other suppliers, to municipal and industrial water and wastewater treatment plants.

16. 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.

17. Respondent stores and uses hydrochloric acid, an RMP Chemical, at the Facility.[1] Respondent receives the hydrochloric acid via shipments in railcars to the Facility.

18. When received at the Facility, the railcars containing hydrochloric acid are isolated from locomotive power and then connected to a distribution system at the Facility for use in its processes. Accordingly, once the railcar containing the hydrochloric acid is isolated from locomotive power at its destination and/or connected to a distribution system, the railcar containing hydrochloric acid becomes part of a stationary source (i.e, the Facility) as defined in Section 112(r)(2)(C) and 40 C.F.R. § 68.3.

19. Hydrochloric acid with a concentration by weight of at least 37% ("37% HCl") is a RMP Chemical listed at 40 C.F.R. § 68.130, with a threshold quantity of 15,000 pounds.[2] For the purpose of determining whether hydrochloric acid is above the threshold, the total weight of hydrochloric acid is determined by multiplying the concentration of hydrochloric acid by the overall weight of the mixture. Therefore, it takes approximately 40,540 pounds of 37% HCl to reach the threshold; a higher concentration requires a lower total weight.[3]

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[1] Most of the hydrochloric acid is used by PCA Systems Corporation, an adjacent company that coordinates business with Holland.

[2] Anhydrous (*i.e.*, containing no water) hydrochloric acid has a threshold of 5,000 pounds.

[3] *See* General Guidance on Risk Management Programs for Chemical Accident Prevention, Chapter 1, p. 11 (EPA March 2009), http://www.epa.gov/emergencies/content/rmp/rmp_guidance.htm#General.

20. Each railcar that delivers hydrochloric acid to the Facility holds up to approximately 190,000 lbs (or 20,000) gallons of hydrochloric acid.

21. Respondent's storage and/or use of approximately 70,300 pounds[4] of 37% HCl in a railcar is therefore a "covered process", as defined in 40 C.F.R. § 68.3.

22. The endpoint for a worse case release of this amount of 37% HCl at the Facility is greater than the distance to a public receptor.

23. Aqueous hydrochloric acid, at any concentration, is not subject to the PSM requirements of 29 C.F.R. § 1910.119, and Respondent is not classified as one of the subject NAICS codes of 40 C.F.R. § 68.10(d)(1).

24. On at least sixteen (16) occasions between February 5, 2008 and March 2, 2010, the concentration of hydrochloric acid in railcars received by Respondent exceeded 37% by weight.

25. As the operator of a stationary source that has more than the threshold amount of regulated substance in a covered process, Respondent was subject to the RMP requirements of the RMP Regulations by no later than February 5, 2008.

26. Accordingly, pursuant to 40 C.F.R. § 68.10(a)-(d), Respondent's storage and/or use of 37% HCl is subject to the requirements of RMP Program 2. The 37% HCl process is subject to Program 2 because (1) the distance to a toxic or flammable endpoint for a worst-case release of 37% HCl is more than the distance to a public receptor, making the process ineligible for Program 1; and (2) the process is not subject to OSHA's PSM regulations and does not fall within one of the delineated NAICS categories, making it ineligible for Program 3.

27. On March 23, 2010, Complainant conducted an inspection at the Facility to determine its compliance with Section 112(r) of the CAA (the "Inspection").

[4] 190,000 lbs mixture * 0.37 lbs HCl/lbs mixture.

28. At the time of the Inspection, Respondent had never submitted a RMP to EPA for its storage and/or use of 37% HCl.

29. On April 14, 2010, Respondent provided documentation to Complainant that it implemented administrative controls to ensure that the concentration of hydrochloric acid in railcars it received from vendors did not exceed 37%.

30. On or about February 17, 2012, Complainant issued a CAA Notice of Violation, Administrative Order and Reporting Requirement ("NOV/AO/RR") to Respondent.

31. On or about May 2, 2012, PCA Systems Corporation ("PCA"), on behalf of itself and Respondent, submitted information in response to the NOV/AO/RR.

32. On or about May 31, 2012, Respondent provided additional information in response to the NOV/AA/RR.

33. As a result of the Inspection, and a review of documents and other information provided by Respondent, Complainant has identified the following alleged violations:

Count 1 - Failure to submit a RMP

34. Complainant realleges and incorporates by reference Paragraphs 1 through 33 of this Complaint.

35. Pursuant to 40 C.F.R. §§ 68.10(a) and 68.150(a)(3), the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a covered process must submit a RMP for all covered processes to EPA by no later than the date on which a regulated substance is present above the threshold quantity in a process.

36. Pursuant to 40 C.F.R. §§ 68.150 - 68.185, the RMP for a Program 2 process documents compliance with the elements of a Program 2 Risk Management Plan, including 40 C.F.R. § 68.12 (General Requirements); 40 C.F.R. § 68.15 (Management System to Oversee

Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-site Consequences of a Release); 40 C.F.R. Part 68, Subpart C (Program 2 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Plan).

37. As described above in Paragraph 24, on at least sixteen (16) occasions between February 5, 2008 and March 2, 2010, the concentration of hydrochloric acid in railcars received by Respondent exceeded 37% by weight.

38. Thus, Respondent was required to submit a Program 2 RMP for its storage and use of 37% HCl by no later than February 5, 2008.

39. As described above in Paragraph 28, at the time of the Inspection (i.e., March 23, 2010), Respondent had never submitted a RMP to EPA for its storage and/or use of 37% HCl.

40. As described in Paragraph 29, on April 14, 2010, Respondent implemented administrative controls to ensure that any railcars it received containing hydrochloric acid had a concentration below 37% by weight.

41. Accordingly, Respondent's failure to submit a RMP plan for its 37% HCl process from at least February 5, 2008 to April 14, 2010 constitutes violations of Section 112(r)(7)(E) of the CAA and 40 C.F.R. §§ 68.10(a)(3) and 68.150(a)(3).

Count 2 - Failure to develop a management system for RMP implementation

42. Complainant realleges and incorporates by reference Paragraphs 1 through 41 of this Complaint.

43. Pursuant to 40 C.F.R. § 68.15, the owner or operator of a stationary source with processes subject to the Program 2 requirements of 40 C.F.R. Part 68 must develop a management system to oversee the implementation of the risk management program elements.

44. As already described and as further described in this Complaint, from at least February 5, 2008 to April 14, 2010, Respondent was not in compliance with many of the risk management program elements for a Program 2 RMP for its 37% HCl storage and/or use at the Facility.

45. Thus, from at least February 5, 2008 to April 14, 2010, Respondent did not have a management system to oversee the implementation of the risk management program elements for its storage and/or use of 37% HCl at the Facility.

46. Accordingly, Respondent's failure to develop a management system to oversee implementation of the risk management program elements for its storage and/or use of 37% HCl at the Facility from at least February 5, 2008 to April 14, 2010 constitutes violations of Section 112(r)(7)(E) of the CAA and 40 C.F.R. § 68.15.

Count 3 - Failure to complete hazard assessment

47. Complainant realleges and incorporates by reference Paragraphs 1 through 46 of this Complaint.

48. Pursuant to 40 C.F.R. §§ 68.10 and 68.12(c)(2), and 40 C.F.R. Part 68, Subpart B (specifically 40 C.F.R. §§ 68.25 and 68.28), the owner or operator of a stationary source with a Program 2 process must perform a hazard assessment that, for each covered process, analyzes and reports a worst-case release scenario that estimates the endpoint of an accidental release of regulated toxic substances from the process under worst-case conditions. The assessment must also include at least one alternative release scenario for each regulated toxic substance held in a covered process.

49. Pursuant to 40 C.F.R. § 68.36, these scenario analyses must be updated at least every five years, and must also be updated within six months of any change in a stationary source that

might reasonably be expected to increase or decrease the distance to an endpoint by a factor of two or more. Pursuant to 40 C.F.R. § 68.42, the owner or operator of a stationary source must also include a five-year accident history with its hazard assessment. Pursuant to 40 C.F.R. § 68.39, the owner or operator must maintain records pertaining to the off-site consequence analysis including, among other things, a description of the vessel selected for the analysis, the assumptions and parameters used, and the rational for those assumptions.

50. In its May 31, 2012 response to the NOV/AO/RR, Respondent stated that it had "partially" completed the required off-site consequence analysis and worst case release scenario analysis for a Program 2 RMP. Respondent also stated that it had completed, but did not save or print, its alternative release scenario analysis. Finally, Respondent stated that it did not have documentation of analyses, methodology, and data in support of its hazard assessment.

51. In support of its "partial" analysis of off-site consequences and worst case release scenario, Respondent submitted a one page print out labeled "Aloha Toxic Threat Zone" ("Aloha Report"). The Aloha Report indicated that the wind was assumed at 10 mile per hour from the north, and as a low range value used 1.8 parts per million (ppm) as a toxic threshold. No other assumptions were included in the Aloha Report, such as (a) the total amount of substance spilled; (b) the amount spilled per minute; (c) the volatilization rate; (d) the ambient temperature; or (e) the surface characteristics. The Aloha Report indicated that the analysis was performed on April 11, 2012.

52. The Aloha Report did not meet the requirements for a proper hazard assessment under 40 C.F.R. Part 68, Subpart B. As described above in Paragraph 25, Respondent was subject to the RMP Requirements, including the preparation of a hazard assessment, by no later than February 5, 2008. The Aloha Report, however, was not completed until April 11, 2012 (as

described above in Paragraph 51). In addition, the Aloha Report did not include documentation of, among other things, a description of the vessel selected for the analysis, the assumptions and parameters used, and the rational for those assumptions. Furthermore, the analysis performed in the Aloha Report did not use some of the required parameters for such an analysis under 40 C.F.R. §§ 68.22 and 68.25 (e.g., wind speed and toxic endpoint) nor did the report provide any support or rationale by Respondent for its use of the differing parameters. Finally, the Aloha Report did not include any information regarding whether or not other parameters used in the analysis, such as temperature, volatilization rate, spill rate, or surface characteristics, were consistent with the requirements of 40 C.F.R. Part 68, Subpart B.

53. Accordingly, Respondent's failure to perform a hazard assessment for its storage and/or use of 37% HCl from at least February 5, 2008 to April 14, 2010 constitutes violations of Section 112(r)(7)(E) of the CAA and 40 C.F. R. Part 68, Subpart B.

Count 4 - Failure to conduct a hazard review

54. Complainant realleges and incorporates by reference Paragraphs 1 through 53 of this Complaint.

55. Pursuant to 40 C.F.R. §§ 68.12(c)(3) and 68.50, the owner or operator of a Program 2 process is required to perform a hazard review on covered substances, processes, and procedures. The hazard review must identify hazards, opportunities for equipment malfunction or human error, safeguards that are used or needed, and any steps used or needed to detect releases. Additionally, the owner or operator must comply with the documentation requirements of 40 C.F.R. § 68.50(c) and ensure that problems identified are resolved in a timely manner. Finally, the owner or operator must update the hazard review every five years and when a major change in the process occurs.

56. In its May 31, 2012 response to the NOV/AO/RR, Respondent stated that it had "partially" conducted a hazard review for its storage and/or use of 37% HCl. In support of this assertion, Respondent provided notes from morning meeting assignments ("MMAs"), its "Annual Environmental Compliance Audit, Goals & Objectives Review and Establishment", an audit of the hydrochloric storage area performed on November 12, 1999 ("Pioneer Audit"), and the results of audits conducted on June 11, 2009 ("Olin Audit") and September 9, 2010 ("Olin Follow up Audit").

57. The information described above in Paragraph 56 did not meet all of the requirements for a complete hazard review in accordance with 40 C.F.R. § 68.50. For example, none of the audits of Respondent's storage and/or use of 37% HCl were performed by February 5, 2008 (i.e., the date Respondent was required to comply with the RMP Regulations). (The first audit, the Olin Audit, was not conducted until June 11, 2009.)

58. In addition, the MMAs did not meet the requirements of a complete hazard review because they did not systematically identify all of the hazards associated with the process, the opportunities for equipment malfunction or human error that could result in a release, or the specific safeguards necessary to prevent or control equipment malfunctions or human errors.

59. Furthermore, Respondent did not ensure that problems identified by a hazard review were resolved in a timely matter. The Olin audit, performed in June 2009, recommended that the unloading connection for the 37% HCl process be equipped with a drain valve to ensure that the delivery hose is fully drained and not pressurized prior to disconnecting. The Olin Follow-up Audit, performed in September 2010, indicated that Respondent had not implemented this recommendation (due to a concern about potential leakage).

60. Accordingly, Respondent's failure to perform a hazard review on its storage and/or use of 37% HCl from at least February 5, 2008 to April 14, 2010 constitutes violations of Section 112(r)(7)(E) of the CAA and 40 C.F.R. §§ 68.12(c)(3) and 68.50.

Count 5 - Failure to comply with operating procedure requirements

61. Complainant realleges and incorporates by reference Paragraphs 1 through 60 of this Complaint.

62. Pursuant to 40 C.F.R. §§ 68.12(c)(3) and 68.52, the owner or operator of a Program 2 process is required to develop and implement written operating procedures that provide instructions or steps for safely conducting activities associated with the covered process. The written operation procedures must address: initial startup; normal operations; temporary operations; emergency shutdown and operations; normal shutdown; startup following a normal or emergency shutdown or a major change that requires a hazard review; consequences of deviations and steps required to correct or avoid deviations; and equipment inspections. The owner or operator must also update the procedures to reflect current operating practices.

63. In its May 31, 2012 response to the NOV/AO/RR, Respondent submitted the following documentation regarding the operating procedures it had in place since April 2010: Hazard Communication Program (dated April 19, 2010, signed May 5, 2010, version "Original," training records dating back to January 25, 2008), Railcar Unloading Procedure (dated June 30, 2011, rev. 6; training documentation dating back to January 25, 2008), and Hydrochloric Acid Concentrations Controls (dated April 14, 2010, training records dating back to April 15, 2010).

64. The information described above in Paragraph 63 did not meet all of the requirements for complete written operating procedures for Respondent's storage and/or use of 37% HCl in accordance with 40 C.F.R. § 68.52. For example, none of the operating procedures

described above in Paragraph 63 were in place by February 5, 2008 (i.e., the date Respondent was required to comply with the RMP Regulations). In addition, while both the Hazard Communication Program and the Railcar Unloading Procedure contained training records dating back to 2008, the records did not include any description of what type of training was actually provided at the time. The Railcar Unloading Procedure also did not describe any emergency shutdown or operations, the startup procedures following a normal or emergency shutdown, the consequences of deviation and steps to correct or avoid deviations, or the procedure for equipment inspections. Furthermore, the Railcar Unloading Procedure only covered the railcar storing the hydrochloric acid and did not address any of the connected processes, including the pump and pipes.

65. Accordingly, Respondent's failure to develop and implement written operating procedures for its storage and/or use of 37% HCl from at least February 5, 2008 to April 14, 2010 constitutes violations of Section 112(r)(7)(E) of the CAA and 40 C.F.R. §§ 68.12(c)(3) and 68.52.

Count 6 - Failure to comply with training requirements

66. Complainant realleges and incorporates by reference Paragraphs 1 through 65 of this Complaint.

67. Pursuant to 40 C.F.R. §§ 68.12(c)(3) and 68.54, the owner or operator of a Program 2 process must train each employee involved in operating a process and provide refresher training at least every three years. The owner or operator must ensure that each employee involved in operating a process has been trained or tested competent in the operating procedures that are required by 40 C.F.R. § 68.52.

68. As described above in Paragraphs 63 and 64, Respondent has not provided any documentation that it had trained its employees from at least February 5, 2008 to April 14, 2010 on the storage and/or use of 37% HCl in accordance with the requirements of 40 C.F.R. § 68.54.

69. Accordingly, Respondent's failure to train each employee involved in its storage and/or use of 37% HCl from at least February 5, 2008 to April 14, 2010 constitutes violations of Section 112(r)(7)(E) of the CAA and 40 C.F.R. §§ 68.12(c)(3) and 68.54.

Count 7 - Failure to comply with maintenance requirements

70. Complainant realleges and incorporates by reference Paragraphs 1 through 69 of this Complaint.

71. Pursuant to 40 C.F.R. §§ 68.12(c)(3) and 68.56, the owner or operator of a Program 2 process must prepare and implement procedures to maintain the ongoing mechanical integrity of process equipment; properly train each employee involved in such maintenance; inspect and test such equipment; and follow generally accepted good engineering practices for inspections and testing procedures.

72. In its May 31, 2012 response to the NOV/AO/RR, Respondent stated that it had established procedures to maintain the ongoing mechanical integrity of the process equipment as of January 26, 2010 and conducted preventative maintenance on equipment involved in the railcar unloading. Respondent also cited its Hazard Communication Program (described above in Paragraphs 63 and 64) and its Emergency Response Plan (dated June 6, 2010, "Original," training dating back to March 4, 2011). In addition, Respondent stated that no maintenance contactors work on process equipment, but "[w]hen appropriate...licensed electricians, certified stainless welders and other documented trades" may conduct maintenance work. Finally, Respondent provided copies of work orders and purchase orders to show that it had implemented

inspection and testing of process equipment that followed generally accepted good engineering practices.

73. The information described above in Paragraph 72 did not meet all of the requirements for complete maintenance procedures for Respondent's storage and/or use of 37% HCl in accordance with 40 C.F.R. § 68.56. For example, none of the maintenance procedures were in place by February 5, 2008 (i.e., the date Respondent was required to comply with the RMP Regulations). In addition, none of the maintenance procedures set a regular schedule and timing for maintenance activities. In addition, the Hazard Communication Program did not include training for employees to ensure safe performance of maintenance activities or how to avoid unsafe conditions. In addition, while the Hazard Communication Program contained training records dating back to 2008, the records did not include any description of what type of training was actually provided at the time. Furthermore, the work and purchase orders did not show that Respondent implemented inspection and testing of process equipment that followed generally accepted good engineering practices. First, the work and purchase orders only dealt with pH probe in the railcar containment area and not the entirety of the covered process. Second, these documents did not describe any frequency or procedures for testing and inspection of the covered process.

74. Accordingly, Respondent's failure to prepare and implement proper maintenance procedures for its storage and/or use of 37% HCl from at least February 5, 2008 to April 14, 2010 constitutes violations of Section 112(r)(7)(E) of the CAA and 40 C.F.R. §§ 68.12(c)(3) and 68.56.

Proposed Civil Penalty

75. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and 7413(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 and 40 C.F.R. Part 19, violations that occurred between March 15, 2004 and January 12, 2009 are subject to civil penalties up to $32,500 per day of violation; and violations that occurred after January 12, 2009 are subject to civil penalties up to $37,500 per day of violation.

76. In light of the above-referenced findings, Complainant seeks to assess civil penalties of up to $32,500 per day of violation for the following CAA violations that occurred on and prior to January 12, 2009, and up to $37,500 per day of violation for the following CAA violations that occurred after January 12, 2009:

(a) Two separate periods of violation for Respondent's failure to submit a RMP for 37% HCl, including 228 days from February 5, 2008 to September 20, 2008 and 300 days from June 18, 2009 to April 14, 2010;

(b) Two separate periods of violation for Respondent's failure to develop a management system for RMP for 37% HCl, including 228 days from February 5, 2008 to September 20, 2008 and 300 days from June 18, 2009 to April 14, 2010;

(c) Two separate periods of violation for Respondent's failure to complete a hazard assessment for storage of 37% HCl, including 228 days from February 5, 2008 to September 20, 2008 and 300 days from June 18, 2009 to April 14, 2010;

(d) Two separate periods of violation for Respondent's failure to identify and evaluate process hazards of 37% HCl process, including 228 days from February 5, 2008 to September 20, 2008 and 300 days from June 18, 2009 to April 14, 2010;

(e) Two separate periods of violation for Respondent's failure to fully develop and implement operating procedures for the 37% HCl process, including 228 days from February 5, 2008 to September 20, 2008 and 300 days from June 18, 2009 to April 14, 2010;

(f) Two separate periods of violation for Respondent's failure to comply with training requirements for the 37% HCl process, including 228 days from February 5, 2008 to September 20, 2008 and 300 days from June 18, 2009 to April 14, 2010; and

(g) Two separate periods of violation for Respondent's failure to comply with maintenance requirements for the 37% HCl process, including 228 days from February 5, 2008 to September 20, 2008 and 300 days from June 18, 2009 to April 14, 2010.

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 threats of releases are minimized. Hydrochloric acid is highly corrosive and has the potential to damage respiratory organs, eyes, skin, and intestines. The dangers associated with hydrochloric acid are increased by its proximity to railcars of sulfuric acid and the bulk storage of anhydrous ammonia. The CAA penalty for these violations shall not exceed $295,000, in accordance with Section 113(d) of the CAA and the DCIA.

77. In determining the amount of the penalty to be assessed, Complainant will take into account the statutory factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e). These factors include the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require.

78. 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. 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.

79. Ability to Pay: Any proposed penalty in this matter will be developed based upon the best information available to Complainant. However, any such penalty may also be adjusted if Respondent is able to establish a bona fide claim of its ability to pay a penalty by providing Complainant with adequate financial documentation of its claim.

NOTICE OF OPPORTUNITY FOR HEARING

80. As provided by Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), 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 82 within thirty (30) days of receipt of this Complaint.

81. 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.

82. 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

83. 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

84. 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

85. 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 Section 16(a)(2)(A) of TSCA. 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

86. 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

09/30/13
Date