

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN RE:

Koppers Incorporated
100 Koppers Road, Follansbee, WV

Respondent.

DOCKET NO. CAA-03-2011-031

PROCEEDING UNDER:

Section 113(d) of the Clean Air Act
42 U.S.C. § 7413(d).

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COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

I. PRELIMINARY STATEMENT

1. This administrative COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING (“Complaint”) is issued by the Complainant, which is the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III (“EPA” or “the Agency”), to Koppers Incorporated, which owns and operates a facility located at 100 Koppers Road in Follansbee, West Virginia, 26037 (“Koppers Follansbee” or “Respondent”).
2. This Complaint is issued pursuant to Section 113(d) of the Clean Air Act (“CAA” or the “Act”), as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”) found at 40 C.F.R Part 22. The Complaint alleges violations by Respondent of Section 112 of the Act, certain provisions of the West Virginia State

Implementation Plan (“WV SIP”), and Koppers Follansbee’s federally-enforceable Title V permit. Authority to issue this Complaint has been delegated to the Director of the Air Protection Division, EPA Region III.

II. APPLICABLE STATUTES AND REGULATIONS

3. Section 110 of the CAA, 42 U.S.C. § 7410, requires that each State adopt and submit to EPA for approval a plan providing for implementation, maintenance, and enforcement of each National Ambient Air Quality Standard (“NAAQS”) in the State, and that such plan be adopted as law by the State following reasonable notice and public hearings. See CAA § 110(a). If EPA finds the State Plan complete, EPA shall approve the State Implementation Plan (“SIP”). See CAA § 110(k). West Virginia’s EPA-approved SIP is set forth at 40 C.F.R. Part 52, Subpart XX.
4. Section 502 of the CAA requires that major sources obtain a Title V operating permit. 42 U.S.C. § 7661a. West Virginia has an approved Title V operating permit program (See 66 Fed. Reg. 50325, Oct. 3, 2001). West Virginia’s Title V permitting program is found at WV 45 CSR 30.
5. Section 112 of the Act, 42 U.S.C. § 7412, establishes a list of hazardous air pollutants (“HAPs”) and directs EPA to define the categories of sources that are required to control emissions of HAPs. Section 112(d) of the Act, 42 U.S.C. § 7412(d), directs EPA to establish national emissions standards for hazardous air pollutants (“NESHAPs”) for sources in each category.
6. Pursuant to Section 112, EPA promulgated the “National Emissions Standards for Benzene Emissions from Coke by-Product Recovery Plants” found at 40 C.F.R. Part 61, Subpart L. See 54 Fed. Reg. 38073 (Sep. 14, 1989).

7. Pursuant to Section 112 of the Act, in 1984 EPA promulgated the National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene, found at 40 C.F.R. Part 61, Subpart J. These regulations apply to certain sources intended to operate in benzene service, such as pumps, compressors, connectors, etc., but do not apply to sources located in coke by-product recovery plants. *See* 40 C.F.R. § 61.110(a), (b). These provisions generally require, among other things, that the source comply with the emission standards in 40 C.F.R. Part 61, Subpart V, the National Emission Standards for Equipment Leaks.

8. Pursuant to Section 112 of the Act, in 1994 EPA promulgated 1) the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (the "SOCMI"), 2) the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, and 3) the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks, found at 40 C.F.R. Part 63, subparts F, G, and H, respectively. These three subparts are collectively referred to as the "NESHAP HON."

9. Pursuant to Section 112 of the Act, in 1999 EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production (the "NESHAP PAI"), found at 40 C.F.R. Part 63, Subpart MMM. With certain exceptions at § 63.1360(d), affected sources subject to MMM include the "facility-wide collection of pesticide active ingredient manufacturing process units (PAI process units) that process, use, or produce HAP," and are

located at a plant site that is a “major source” under Section 112(a) of the Act. 40 C.F.R. § 63.1360(a). Two exemptions from the NESHAP PAI are for PAI process units that are subject to Subpart F (the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry), and coal tar distillation. 40 C.F.R. § 63.1360(d)(2), (4).

10. Pursuant to Section 112(f)(4) of the Act, 42 U.S.C. § 7412(f)(4), no hazardous air pollutant may be emitted from any stationary source in violation of the standard established under Section 112(d) of the Act that applies to that source.
11. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to issue an administrative penalty order under Section 113(d) upon a finding that any person has violated the requirements of a SIP (§ 113(a)(1)), and/or violated any provision of a rule promulgated under Section 112 of the Act, or violated the term of any permit issued under Title V of the Act (§ 113(a)(3)).
12. Under the authority of Section 114 of the Act, 42 U.S.C. § 7414, representatives of EPA Region III conducted an on-site inspection of the Koppers Follansbee Facility on March 10, 2009. A representative of the West Virginia Department of Environmental Protection (WVDEP) was also present during the inspection.
13. At the time of inspection, the Koppers Follansbee Facility was owned by Koppers, Incorporated, which is a wholly-owned subsidiary of Koppers Holdings Incorporated.

14. The Koppers Follansbee Facility manufactures various grades of coal tar pitch, chemical oils and refined tars from crude coke oven tar. Respondent also produces naphthalene from refined chemical oil and blends different coal tar distillates to produce creosote.
15. Respondent is a "person" within the meaning of Sections 113(a) and 502 of the Act, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
16. The Koppers Follansbee Facility is classified as a major stationary source, as defined in Section 302(e) of the CAA, because it has the potential to emit more than 100 tons per year of any air pollutant, including the air pollutants NO_x, SO₂, CO, VOCs and/or HAPs.
17. On June 23, 1992 Koppers entered into Consent Order CO-R27-92-16 with the WVDEP wherein Koppers Follansbee agreed to install equipment to control benzene emissions. As required by the Consent Order, Koppers Follansbee installed a debenzolizer unit on or about August 9, 1999. The debenzolizer unit removes benzene from the Refined Chemical Oil ("RCO"). The reduced-benzene RCO is further processed into naphthalene and the concentrated benzene is transferred to tank 11 for storage and used as fuel for the boilers. The overhead or concentrated benzene from the debenzolizer is subject to 40 C.F.R. Part 61, Subpart J.
18. On August 17, 1994, Koppers Follansbee submitted an Initial Notification for the NESHAP IION applicability. Koppers Follansbee produces naphthalene from benzene-free Refined Chemical Oil which is recovered at the bottom of the debenzolizer. The naphthalene distillation

process unit (NDU) is subject to Part 63, Subparts F, G and H (NESHAP HON).

19. Under WVDEP Consent Order CO-R13-E2005-4, issued on February 7, 2005, Koppers agreed to apply the leak detection and repair (LDAR) requirements in 40 C.F.R. Part 63, Subpart H (National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks) to equipment subject to 40 C.F.R. Part 61, Subpart J (National Emission Standards for Equipment Leaks of Benzene), notwithstanding the exemption for coke by-product recovery plants at 40 C.F.R. § 61.110(b), as outlined in the Appendix attached to the Consent Order.

20. On its Notification of Compliance Status (NOC), dated November 1, 1999, Koppers Follansbee identified the equipment in benzene service associated with the debenzolizer unit that would be monitored using 40 C.F.R. Part 63, Subpart H. The following equipment was identified in benzene service:

- (1) Debenzolizer column
- (2) Tank 11
- (3) Boiler #2 feed/return lines
- (4) Boiler #3 feed/return lines
- (5) Close vent system to the reboiler/flare.

21. On September 4, 2007, the Koppers Follansbee Facility submitted to WVDEP a permit application (R13-2274E) to become a synthetic minor source of VOCs and HAPs in order to avoid the requirements of 40 C.F.R., Part 63, Subpart FFFF, the Miscellaneous Organic National

Emission Standards for Hazardous Air Pollutants (the "MON"). The MON was effective on May 9, 2008.

22. Respondent proposed the following changes to its operation in the synthetic minor source permit application number R13-2274E:

1. To remove #31 Tube Heater as an air pollution control device and replace it with either the existing flare or a new thermal oxidizer. The #31 tube heater will remain as only a process heater.
2. To use new feedstock, namely Petro Tar, at the #1, #2 and #4 distillation columns for the production of petroleum pitch. This included the construction of a new tank 808 to store petroleum pitch, while existing tanks would be used to store the raw material and distillate fraction.
3. Implementation of a plant-wide leak detection and repair (LDAR) program for use of the USEPA Correlation Method¹.
4. Controlling the Pavement Sealer Base (PSB) storage tanks and Modified PSB (MPSB) and Refined Tar (RT) blending tanks by at least 98% (Tanks 13, 14, 251, 252, 253, 254, 406 and 407).
5. Controlling the PSB, MPSB and RT product loading by at least 98%.
6. Controlling the creosote product tanks by at least 98% (tanks 221, 222, 223 and 224).
7. Controlling the creosote product loading by at least 98%.
8. Controlling the distillate tanks (middle and heavy fractions from the tar refining columns, Tanks 17 and 382) by at least 98%.

23. On May 8, 2008, WVDEP issued permit number R13-2274E to the Koppers Follansbee Facility to construct, modify, relocate, and/or operate in accordance with the permit application number R13-2274E.

24. On May 20, 2004 the Koppers Follansbee Facility submitted a Notice of Compliance Status (NOC) for the NESHAP PAI. This NOC described six (6) creosote blend tanks (i.e. tanks 221, 222, 223, 224, 126 and 127). The NOC also included a summary of the composition of the material contained in these tanks and further identified the equipment (pumps, compressor,

¹ Attachment O to this application further explains that the monitoring results from the LDAR program will be used to calculate VOC emissions, using the "EPA Correlation Approach" contained in EPA's "Protocol for Equipment Leaks Emission Estimates", EPA-453/R-95-017, November 1995.

pressure relief devices, agitators, sampling collection system open ended valve or line, valves and connectors and instrumentation system) subject to Leak Detection and Repair (LDAR) provisions of the NESHAP PAI

III. VIOLATIONS

Count I

25. On its November 1999 NOC, Koppers Follansbee identified the equipment in benzene service associated with the debenzolizer unit that would be monitored using 40 C.F.R. Part 63, Subpart

H. The following equipment was identified as in benzene service:

- (1) Debenzolizer column
- (2) Tank 11
- (3) Boiler #2 feed/return lines
- (4) Boiler # 3 feed/return lines
- (5) Closed vent system to the reboiler/flare.

26. According to Koppers Follansbee's Title V permit, the blend tanks associated with the Creosote Processing Unit are Group 2 Process Vents subject to the PAI. These blend tanks are identified as Tanks 221, 222, 223, and 224. See Koppers Follansbee's Title V permit, #R30-009-00001-2006, at p. 110.

27. 40 C.F.R. § 63.162(c) of subpart H as well as 40 C.F.R. § 63.1363(a)(7) of Subpart MMM requires that each piece of equipment in a process unit subject to subpart H or § 63.1363(a)(7), respectively, be identified so that it can be "distinguished readily" from equipment to which such

subpart does not apply.

28. During the 2009 inspection, the EPA inspectors found that the following components were not identified or not properly identified in the Koppers Follansbee LDAR program:

Boiler #2- Koppers failed to properly identify valve number 55.

Tanks 221 to 224: Koppers failed to identify 138 components associated with tanks 221 through 224.

29. Respondent's failure to properly identify these components as part of its LDAR program was a violation of 40 C.F.R. § 63.162(c) for valve number 55 and 40 C.F.R. § 63.1363(a)(7) for the 138 components associated with tanks 221 through 224 .

Count II

30. Around 2004 or 2005, Koppers Follansbee agreed, as part of the Consent Order with the WVDEP described in Paragraph 19 above, to conduct LDAR on its debenzolizer unit in accordance with 40 C.F.R. Part 63, Subpart H, the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks. This agreement has been incorporated into Koppers Follansbee's Title V permit, # R30-009-00001-2006, at page 54, as a federally-enforceable requirement.

31. 40 C.F.R. § 63.168(b) of Subpart H requires that valves be monitored at certain intervals of time, as described in the regulations.

32. During the inspection, EPA determined that Koppers failed to monitor valves 168 and 169 at all

until approximately October 2010. Valves 168 and 169 are part of the overheads from the debenzolizer and as such are subject to Part 61, Subpart J and therefore, pursuant to the Consent Order described in paragraph 19 and Koppers Follansbee's Title V permit, subject to Part 63, Subpart H.

33. Respondent's failure to monitor valves 168 and 169 at all times prior to February 2011 was a violation of 40 C.F.R. § 63.168 and Koppers Follansbee's Title V permit.

Count III

34. 40 C.F.R. § 63.167(a)(1) of Subpart H requires that an open-ended valve or line be equipped with a cap, blind flange, plug or second valve, with exceptions set forth in § 63.167(b), (d), and (e), which are not applicable here.

35. During the 2009 inspection, the EPA inspectors found that valve number 910g was not equipped with a second valve, cap, plug or blind flange. Valve 910g is located on top of tank 7, which is part of the Napthalene Distillation Unit and therefore subject to Part 63, subparts F, G, and H. Respondent therefore violated 40 C.F.R. § 63.167(a)(1).

Count IV

36. In its synthetic minor source permit application, Koppers Follansbee agreed to control the emissions from certain tanks and equipment by 98% by routing the emissions to a thermal oxidizer or a flare, in order to limit total HAP emissions to below 24.2 tons per year. Koppers Follansbee requested these limits in permit application R13-2274E in order to be a synthetic minor source and avoid applicability of the MON. Synthetic minor source permits issued by WVDEP are federally-enforceable as part of the EPA-approved Title V permit program.

37. At this time, a compressor collects and feeds emissions from at least the following process units to the thermal oxidizer:

Tar distillation columns 1, 2 and 4

Overhead from the debenzolizer- Subject to Part 61, Subpart J

Overheads from Naphthalene distillation columns and tanks-subject to part 63, Subpart F, G and H

Emissions from the creosote blend tanks 221 through 224-subject to Part 63 Subpart MMM.

38. During the 2009 inspection, the EPA inspectors observed that the compressor collecting emissions from various process equipment, including the equipment identified in paragraph 36 above, and feeding the thermal oxidizer was leaking process fluid severely. Readings of the leak using EPA's leak detection equipment showed concentrations of total HAPs as high as 16,000 ppm.

39. This compressor draws gas streams (process fluids) from various points in the Follansbee Facility subject to the NESHAP HON and with greater than 5% by weight of hazardous air pollutants and is therefore in organic hazardous air pollutant service and subject to 40 C.F.R. § 63.164, which requires (with exceptions not relevant here) that each compressor be equipped with a seal system that includes a barrier fluid system that prevents leakage of process fluid to the atmosphere. Respondent's failure to equip the compressor with a seal system that prevents leakage of process fluid from the compressor for the thermal oxidizer is a violation of 40 C.F.R. § 63.164.

Count V

40. The general requirements for the National Emission Standards for Hazardous Air Pollutant source categories, found at 40 C.F.R. Part 63, Subpart A, include operation and maintenance requirements in 40 C.F.R. § 63.6(e) that include the requirement to have a Start-up, Shutdown and Malfunction (SSM) plan. *See* 40 C.F.R. § 63.6(e)(3). The purpose of the SSM plan is to ensure that during times of SSM, the owner or operator of the affected source minimizes emissions to the greatest extent of safety and good air pollution control practices.
41. 40 C.F.R. § 63.6(e), as referenced by 40 C.F.R. § 63.1367(a)(3) and Section 21.1.3 of Koppers Follansbee's Title V permit, requires following SSM Plan requirements for certain tanks subject to 40 C.F.R. Part 63, subpart MMM, including tank 221, a creosote tank. The SSM Plan requirements are set forth at Sections 21.4.1(2) and 21.5.4 of Koppers' Title V permit.
42. On or about May 9, 2008, Koppers Follansbee routed emissions from certain creosote tanks, including tank 221, to the Thermal Oxidizer. During EPA's 2009 inspection, the Thermal Oxidizer was not operating continuously. When EPA inspectors monitored the top of Tank 221, the inspectors found a hole in the top of the tank which was leaking. EPA's leak detection equipment detected total HAP emissions from the hole on tank 221 of up to 5000 ppm.
43. Respondent failed to include tank 221 in its SSM plan, and therefore did not follow the requirements of its SSM plan when the Thermal Oxidizer was not operating. Respondent's

failure to control emissions from Tank 221 while the Thermal Oxidizer was not in operation was a violation of Koppers' SSM Plan and Section 21.1.3 of Koppers' Title V permit.

Count VI

44. 40 C.F.R. § 63.163(b)(1) and (2) defines a leak detection machinery reading of 1000 ppm or greater as a leak for pumps in light liquid service. 40 C.F.R. § 63.180 requires the use of Method 21 for the calibration of leak detection machinery. Method 21, Section 7.1.2 requires "for each organic species to use a known concentration equal to the applicable leak definition," which in this case is 1000 ppm.
45. Koppers Follansbee did not use a 1000 ppm calibration gas to calibrate its monitoring instrument when monitoring pumps in light liquid service during the following months: May and April 2006; and June, July, August, September and November 2007. Instead, Koppers Follansbee used a calibration gas of zero (0) and 10,000 ppm. Respondent therefore violated 40 C.F.R. § 63.180 by failing to follow the requirements of Method 21.
46. On August 13, 2010, EPA issued a Finding of Violation ("FOV") to Koppers for the violations alleged above at the Follansbee facility. A copy of the FOV was provided to the WVDEP. EPA met with representatives of Koppers on February 17, 2011, to discuss the violations alleged in the FOV.

IV. PROPOSED CIVIL PENALTY

47. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Parts 19 and 27, authorize a penalty of not more than \$32,500 for each violation of the CAA that occurred after March 15, 2004 through January 12, 2009, and a penalty of not more than \$37,500 for each violation which occurred after January 12, 2009. EPA proposes to assess a civil penalty of \$301,000 against Respondent as follows:

Economic benefit - \$0

Gravity Component

Potential for Harm

Amount of Pollutant - \$0

Toxicity of Pollutant - \$15,000 (naphthalene)

Sensitivity of Environment - \$ 0

Length of Time of Violation

Compressor violation- 24 months (3/10/09 – 3/10/11) = \$25,000

SSMP violation – 3/10/09 – 7/14/10 = \$20,000

Importance to Regulatory Scheme

Work practice std violation (SSMP) = \$10,000

LDAR Violations (Appendix VI to penalty policy)

139 unmarked components creosote tanks = \$13,900 (\$100 x 139)

Equipment Standard

Failure to cap open-ended line = \$15,000

Failure to operate compressor per 63.164 = \$15,000

Monitoring

Failure to calibrate properly for 7 months, at \$7,500/month, but reduced by .5 (This represents a failure to monitor correctly 50% of time) = \$26,500

Failure to monitor valves 168, 169 annually = \$10,000

Importance to Regulatory scheme subtotal = \$90,150

Size of violator = \$75,000

Koppers Holding net worth of \$220,000,000 was reduced to 50% of gravity component, or \$75,000.

Gravity total = \$225,150

Adjustment factors – None applied at this time

Inflation adjustments

Mar 16, 2004 – Jan 12, 2009 = $1.2895 \times \$225,150 \times 3/5 = \$174,199$

Jan 12, 2009 and after = $1.4163 \times \$225,150 \times 2/5 = \$127,552$

Inflation adjusted gravity = $\$174,111 + \$127,552 = \$301,751$

Total Proposed Penalty = \$301,751, rounded down to \$301,000

48. The proposed civil penalty has been determined in accordance with Section 113 of the CAA, 42 U.S.C. § 7413; 40 C.F.R. Part 19; U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 21, 1991 (CAA Penalty Policy), and Appendix VI thereto; and Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004), dated September 21, 2004 (Inflation Policy). Copies of the CAA Penalty Policy and Appendix VI thereto, and the Inflation Policy are enclosed with this Complaint. The proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

49. In determining the amount of any penalty to be assessed, Section 113(e) of the CAA, 42 U.S.C. §

7413(e), requires EPA to take into consideration 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, and the seriousness of the violation. To develop the proposed penalty herein, Complainant has taken into account the particular facts and circumstances of this case with specific reference to Appendix VI as well as the CAA Penalty Policy, both of which were indexed for inflation in keeping with 40 C.F.R. Part 19.

50. EPA will consider, among other factors, Respondent's ability to pay to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of their businesses and the economic impact of the proposed penalty on their businesses. The burden of raising and demonstrating an inability to pay rests with Respondent. In addition, to the extent that facts or circumstances unknown to Complainant at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

51. EPA's applicable penalty policy represents an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case

as well as the amount and nature of the penalty proposed.

52. No further adjustment of the penalty appears warranted under the applicable penalty policies at this time. If appropriate, further penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

53. Respondent has the right to request a hearing to contest any matter of law or material fact set forth in the Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk, U.S. EPA Region III (3RC00), 1650 Arch Street, Philadelphia, PA 19103-2029 within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the material factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation, the Answer should so state. That statement will be deemed a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Respondent's failure to admit, deny or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. A copy of the Answer and all other documents filed with the Regional Hearing Clerk related to this Complaint must be sent to Doug Snyder (3RC10), Assistant Regional Counsel, U.S. EPA

Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

54. A hearing upon the issues raised by the complaint and answer may be held if requested by Respondent in its answer. Failure to Answer may result in the filing of a Motion for Default Order imposing the penalties proposed herein without further proceedings.

55. Any hearing requested will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 554, and the Consolidated Rules at 40 C.F.R. Part 22. A copy of these rules is enclosed. Hearings will be held in a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d).

VI. SETTLEMENT CONFERENCE

56. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CAA. Whether or not a hearing is requested, Respondent may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed civil penalty.

57. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

58. The attorney assigned to this case is Doug Snyder, Assistant Regional Counsel. If you have any questions or desire to arrange an informal settlement conference, please contact Mr. Snyder at (215) 814-2692 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal counsel, you must have your counsel contact Mr. Snyder on your behalf. Please be advised that the Consolidated Rules at 40 C.F.R. § 22.8 prohibit any unilateral discussion of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator or the Regional Judicial Officer after the issuance of a Complaint.

VII. QUICK RESOLUTION

59. In accordance with 40 C.F.R. § 22.18(a) of the Consolidated Rules, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's prehearing exchange. If Respondent pays the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the Consolidated Rules, no Answer need be filed.

60. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the Consolidated Rules, Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the

Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Doug Snyder (3RC10), Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules.

61. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the Consolidated Rules, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations and to appeal the final order.

62. Payment of the penalty shall be made by cashier's check, certified check, electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments also shall reference the above case caption and docket number.

63. All checks shall be made payable to Treasurer, United States of America and shall be mailed to the attention of:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000.

Overnight deliveries shall be sent to:

U.S. Bank
Government Lockbox 979077
Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
(314) 418-1028

All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental
Protection Agency"

Payments through ACH (also known as REX or remittance express) shall be directed to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA : 051036706
Account number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
(866) 234-5681

In addition, there is now an on line, internet payment option, available through the United States Department of Treasury. This payment option can be accessed from www.pay.gov. Enter sfo 1.1 in the search field. Open form and complete required fields.

At the same time that any payment is made, copies of any corresponding check or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Doug Snyder (3RC10), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

9/30/2011

Date



Diana Esher, Director
Air Protection Division

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