(4) maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received; (5) placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or (6) any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it became a waste or is received. *See also* 40 C.F.R. § 273.15.

90. At the time of the April 2011 Inspection, none of the universal wastes identified in paragraphs 82 and 83 were labeled or marked, or placed in containers that were labeled or marked, with the earliest date that the universal wastes became wastes or were received. During the April 2011 Inspection, Respondent's representatives were unable to identify the earliest date that the universal wastes identified in paragraphs 82 and 83 became wastes or were received.

91. Respondent's failure to properly mark or label the containers of hazardous wastes identified in paragraphs 79 and 80 with the date upon which the period of accumulation began, and Respondent's failure to mark or label the universal wastes identified in paragraphs 82 and 83 or the containers they were placed in with the earliest date that the universal wastes became wastes or were received, or otherwise identify the date that those universal wastes first became wastes or were received, constitute violations of 310 C.M.R. §§ 30.341(2)(d) and 30.1034(6), respectively.

Count 5: Failure to Maintain Adequate Aisle Space Between Hazardous Waste Containers

92. The allegations in paragraphs 1 through 91 are hereby realleged and incorporated herein by reference.

93. Pursuant to 310 C.M.R. § 30.341(1)(e), which references 310 C.M.R. § 30.524 as amended by 310 C.M.R. § 30.341(1)(e)(6), a large quantity generator must comply with

standards for emergency prevention and response, including the requirement that a generator must maintain sufficient aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area within the hazardous waste management unit in an emergency, unless the generator determines and documents in its files that aisle space is not needed for any of these purposes. Pursuant to 310 C.M.R. § 30.342(1)(c), throughout the period of accumulation, a generator must comply with standards for the use and management of containers, including the requirements set forth in 310 C.M.R. § 30.685. Pursuant to 310 C.M.R. § 30.685(4), aisle spacing for container storage of hazardous waste must be such that the owner or operator or the MassDEP can inspect each row of containers to ensure compliance with standards for the use and management of containers found in 310 C.M.R. §§ 30.681 through 30.689 (including but not limited to requirements for labeling and marking, condition of containers, compatibility of waste with containers, container management, inspections, and containment). *See also* 40 C.F.R. §§ 262.34(a)(4), 265.35.

94. During the April 2011 Inspection, Respondent was storing twenty-three (23) 55-gallon drums inside the HWSA, each labeled "hazardous waste, ignitable, alcohols, ketones, petroleum distillates." Eighteen (18) of those drums were placed in three (3) rows abutting each other, the exterior wall of the building, and the side wall of the HWSA cage as follows. The back row of seven (7) drums was immediately adjacent to the exterior wall. The front row contained five (5) drums, and the middle row contained six (6) drums. There was no aisle space between the back row and the exterior wall, between the back and middle rows, between the middle and front rows, or between any of the drums within each row itself. The first drum in each of the three rows directly abutted one side of the HWSA cage. Accordingly, only seven (7)

drums located along the perimeter of that grouping of eighteen (18) drums had sufficient aisle space such that they could be inspected by EPA or Respondent's representatives.

95. Respondent's failure to maintain adequate aisle space between rows of containers of hazardous waste in the HWSA constitutes a violation of 310 C.M.R. §§ 30.341(1)(e), 30.342(1)(c), 30.524, and 30.685(4).

Count 6: Failure to Meet Standards for Emergency Prevention and Response in order to Minimize the Possibility of a Fire, Explosion, or Sudden Release of Hazardous Wastes

96. The allegations in paragraphs 1 through 95 are hereby realleged and incorporated herein by reference.

97. Pursuant to 310 C.M.R. §§ 30.341(1)(e) and 30.524(2)(f), a hazardous waste management unit must be equipped with an up-to-date written list containing the following information, a copy of which shall be prominently posted near the telephones at the site of accumulation: (1) the name(s) and telephone number(s) of the emergency coordinator(s); (2) the location(s) of the fire extinguisher(s) and spill control material(s), and, if present, the fire alarms; (3) the telephone number of the fire department, or, if there is a direct alarm system, instructions on how to activate it, or both; and (4) evacuation routes, where applicable. *See also* 40 C.F.R. §§ 262.34(a)(4), 265.52(d)-(f), 265.53.

98. During the April 2011 Inspection, a copy of the Facility's emergency information list was posted next to the nearest telephone, which was in an employee office located approximately 40 feet from the HWSA. The posting did not contain a list or the location of emergency response equipment for the HWSA, nor did the posting identify or describe an emergency evacuation route.

99. Pursuant to 310 C.M.R. §§ 30.341(1)(e)(1) and 30.524(1), a hazardous waste management unit must be designed and operated to prevent, and constructed and maintained to

minimize, the possibility of any threat to public health, safety, or welfare, or the environment from a fire, explosion, or any other unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water. *See also* 40 C.F.R. §§ 262.34(a)(4), 265.31.

100. During the April 2011 Inspection, Respondent was storing a rack filled with metal tools and other production equipment inside the HWSA. According to Respondents' representatives, these tools are regularly accessed by production employees who are not trained in hazardous waste management. Without hazardous waste management training, employees may not be aware of how to avoid dangerous activities that could cause the ignition of hazardous waste or hazardous waste vapors in the HWSA (such as sparks caused by metal-to-metal contact).

101. EPA representatives also observed a large quantity of broken glass from broken mercury-containing lamps on the floor in and around the area identified by Respondent's representatives as the universal waste storage area.

102. Respondent's failure to include certain information on its emergency posting and its failure to design and operate the HWSA in a way that minimizes the possibility of a threat to public health, safety, welfare, or the environment from a fire, explosion, or any other release of hazardous waste, by failing to store metal tools in a safe area and by failing to properly manage waste fluorescent mercury-containing lamps, constitute violations of 310 C.M.R. §§ 30.341(1)(e), 30.524(1), and 30.524(2)(f).

Count 7: Failure to Conduct Weekly Inspections of the Hazardous Waste Storage Area

103. The allegations in paragraphs 1 through 102 are hereby realleged and incorporated herein by reference.

104. Pursuant to 310 C.M.R. § 30.342(1)(d), throughout the period of accumulation, a generator must comply with the standards for the use and management of containers including but not limited to those set forth in 310 C.M.R. § 30.686, which requires weekly inspections of areas where hazardous waste containers are stored, looking for leaking and deterioration, caused by corrosion or other factors, of containers and the containment system. Pursuant to 310 C.M.R. §§ 30.342(1)(d)(2) and 30.342(1)(d)(3), a generator must record every such inspection in an inspection log or summary and keep such inspection records for at least three years from the date of inspection or until final closure pursuant to 310 C.M.R. § 30.342(1)(g), whichever period is longer, and such records must contain, at a minimum, the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions. *See also* 40 C.F.R. §§ 262.34(a)(1)(i), 265.174.

105. During the April 2011 Inspection, Respondent was unable to provide any evidence that weekly inspections of the HWSA were being conducted, nor was Respondent able to provide any written documentation of inspections of the HWSA conducted at any time.

106. Respondent's failure to conduct and document any inspections of the areas where containers of hazardous waste were stored at the Facility constitutes violations of 310 C.M.R. §§ 30.342(1)(d) and 30.686.

Count 8: Failure to Maintain an Adequate Hazardous Waste Contingency Plan

107. The allegations in paragraphs 1 through 106 are hereby realleged and incorporated herein by reference.

108. Pursuant to 310 C.M.R. § 30.341(1)(b), a large quantity generator must comply with management standards found at 310 C.M.R. § 30.521 governing the purpose, content, and implementation of a contingency plan designed to prevent and to minimize hazards to public health, safety, or welfare or the environment from fires, explosions, spills, or any other

unplanned release of hazardous waste. Pursuant to 310 C.M.R. §§ 30.341(1)(b)(5) and 30.521(8), the contingency plan must list the names, addresses, and the office and home telephone numbers of all individuals qualified to act as emergency coordinator, and this list must be kept up-to-date. Pursuant to 310 C.M.R. § 30.341(1)(c), a copy of the site's contingency plan and all revisions must be submitted to local police departments, local fire departments, hospitals, local boards of health, the chief executive officer of the community, and state and local emergency response teams that may be called upon to provide emergency services, and a copy of the contingency plan must also be kept on-site and be made available for inspection by MassDEP. *See also* 40 C.F.R. §§ 262.34(a)(4), 265.52, 265.53.

109. At the time of the April 2011 Inspection, the Facility's contingency plan (dated "May 14, 2010, rev. 1"), which identified Ryan Simpson as the emergency coordinator and A. Bruce Simpson and Brian Lincoln as alternate emergency contacts, failed to provide home addresses for any of the listed emergency contacts. The contingency plan also failed to include home phone numbers for the two individuals identified as alternate emergency contacts. Respondent was unable to confirm that local police and fire departments and emergency response teams were made aware of and provided a copy of the contingency plan.

110. Pursuant to 310 C.M.R. §§ 30.341(1)(b) and 30.521(7), an emergency coordinator must be on site at all times, or, if appropriate, on call and available to respond to an emergency by reaching the site within one hour, and the emergency coordinator must be thoroughly familiar with all aspects of the contingency plan, all operations and activities at the site, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. *See also* 40 C.F.R. §§ 262.34(a)(4), 265.55.

111. At the time of the April 2011 Inspection, Ryan Simpson, who was identified in the contingency plan as the primary emergency coordinator, was unaware of the location or contents of the Facility's contingency plan. Mr. Simpson stated that he was the primary hazardous waste emergency coordinator and that there were no alternates identified in the contingency plan (although the contingency plan stated otherwise). He also stated that he had never received any training on the requirements or contents of the contingency plan or in hazardous waste management generally. The representatives of Respondent who were on site at the beginning of the April 2011 Inspection (including but not limited to Ryan Simpson, the emergency coordinator, and Brian Lincoln, the alternate emergency contact) were unable to find a copy of the Facility's contingency plan until several hours later when Charles Lincoln, the Facility's Environmental Director, arrived on site.

112. Respondent's failure to maintain, implement, and share with local emergency responders an adequate contingency plan for the Facility, and Respondent's failure to ensure that a competent emergency coordinator who was familiar with the Facility's hazardous waste management program and the contents of the contingency plan was on site or on call and available to respond to emergencies at all times constitute violations of 310 C.M.R. §§ 30.341(1)(b), 30.341(1)(c), 30.521(7), and 30.521(8).

Count 9: Failure to Implement an Adequate Hazardous Waste Training Program

113. The allegations in paragraphs 1 through 112 are hereby realleged and incorporated herein by reference.

114. Pursuant to 310 C.M.R. §§ 30.341(1)(a) and 30.516(1)(a), site personnel assigned to the management of hazardous waste must successfully complete a program of instruction or on-the-job training that teaches them to perform their duties in a way that ensures the site's compliance with 310 C.M.R. § 30.000. Pursuant to 310 C.M.R. §§ 30.341(1)(a) and

30.516(1)(b)-(c), personnel new to a site cannot work in unsupervised positions until they have successfully completed those training requirements, and personnel must successfully complete those training requirements within six months of their employment or being assigned to a new position. Pursuant to 310 C.M.R. §§ 30.341(1)(a) and 30.516(1)(d), site personnel must take part in an annual review of those initial training requirements. Pursuant to 310 C.M.R. §§ 30.341(1)(a) and 30.516(1)(e), training records on current personnel must be kept until closure of the site, and training records of former personnel must be kept for at least three years following their departure. Pursuant to 310 C.M.R. §§ 30.341(1)(a) and 30.516(2)(a), a generator must prepare a written personnel training plan designed to ensure compliance with those training requirements, and the plan must specify how personnel will be familiarized with the nature of hazardous waste at the site, emergency procedures, emergency equipment, emergency systems, and personnel safety equipment. Pursuant to 310 C.M.R. §§ 30.341(1)(a) and 30.516(2)(b), the personnel training plan must also include the following documents and records: (1) the job title for each position at the facility related to hazardous waste management; (2) a written job description for each such position, including the requisite skill, education, or other qualifications, and duties, of employees assigned to each such position; (3) a written description of the type and amount of both introductory and continuing training that will be given to each individual filling such a position; and (4) records that document that the requisite training or job experience has been given to, and satisfactorily completed by, facility personnel. *See also* 40 C.F.R. §§ 262.34(a)(4), 265.16.

115. At the time of the April 2011 Inspection, Shield Packaging employees who manage hazardous waste had not received the required hazardous waste training. The following Shield Packaging employees, with duties relating to the management of hazardous waste, were

not properly trained in RCRA hazardous waste management for at least three years prior to the April 2011 Inspection:

a. Charles Lincoln, Environmental Health and Safety Director. At the time of the April 2011 Inspection, Mr. Lincoln had worked at Shield Packaging for at least three years. Mr. Lincoln oversaw all environmental health and safety activity at the Facility, including hazardous waste management. Respondent provided no hazardous waste training records for Mr. Lincoln.

b. Darcy Kmiotek, Office Manager. At the time of the April 2011 Inspection, Ms. Kmiotek had worked at Shield Packaging for at least three years. She routinely checked all outgoing universal waste manifests and had, on occasion, signed the generator block of outgoing hazardous waste manifests. Respondent provided proof of hazardous waste training Ms. Kmiotek received when she was employed at a different facility, but could provide no records of hazardous waste training provided to Ms. Kmiotek regarding her employment and duties at Shield Packaging.

c. Ryan Simpson, Maintenance Department Manager. At the time of the April 2011 Inspection, Mr. Simpson had worked at Shield Packaging for at least three years. Mr. Simpson was identified in the Facility's hazardous waste contingency plan as the primary emergency coordinator. Respondent provided no hazardous waste training records for Mr. Simpson during the April 2011 Inspection. According to the Responses, Mr. Simpson received hazardous waste management training on May 5-6, 2011.

d. Brian Lincoln, Plant Manager. At the time of the April 2011 Inspection, Mr. Lincoln had worked at Shield Packaging for at least three years. Mr. Lincoln was responsible for day to day operation of the Facility, including production, shipping, and

receiving. Together, Mr. Lincoln and Michael Decker (see paragraph 115(e) below) manage the Facility's HWSA. Mr. Lincoln was identified in the Facility's hazardous waste contingency plan and on the emergency posting near the HWSA as an alternate emergency contact. Respondent provided no hazardous waste training records for Mr. Lincoln during the April 2011 Inspection. According to the Responses, Mr. Lincoln received hazardous waste management training from Ryan Simpson on August 11, 2011. However, the Responses did not include a written description of the type and amount of training that Mr. Lincoln received.

e. Michael Decker, Back Room Supervisor. At the time of the April 2011 Inspection, Mr. Decker had worked at Shield Packaging for at least three years. Together, Mr. Decker and Charles Lincoln manage the Facility's HWSA. Mr. Decker is in charge of the back room, the gassing room, the mixing room, and the flammable storage room (the latter includes the HWSA). Respondent provided no hazardous waste training records for Mr. Decker during the April 2011 Inspection. According to the Responses, Mr. Decker received hazardous waste management training from Ryan Simpson on August 11, 2011. However, the Responses did not include a written description of the type and amount of training that Mr. Decker received.

f. Five or six back room/production line employees. During the April 2011 Inspection, Michael Decker stated that he supervises 5 to 6 production line employees who regularly access the HWSA in order to transfer hazardous waste into the HWSA on a daily basis. He also stated that none of those employees had been trained in hazardous waste management. Respondent provided no hazardous waste training records for these back room/production line employees.

g. Jonathan Caragiano, Laboratory Technician. At the time of the April 2011 Inspection, Mr. Caragiano had worked at Shield Packaging for at least three years. During the

April 2011 Inspection, Mr. Caragiano stated that he transports wastes from the laboratory to a 55-gallon drum located immediately outside the HWSA at the end of each day. Respondent provided no hazardous waste training records for Mr. Caragiano.

h. John Matt, Retain Room Manager. At the time of the April 2011 Inspection, Mr. Matt had worked at Shield Packaging for at least three years. The retain room contains samples of each product Respondent prepares and packages for customers. Mr. Matt regularly reviews the samples in the retain room and removes old containers for either disposal or reincorporation into the production process, if possible. Mr. Matt also supervises the transfer of retain samples designated for disposal into a hazardous waste drum and the transfer of hazardous waste containers from the HWSA to a carrier. Respondent provided no hazardous waste training records for Mr. Matt.

i. A. Bruce Simpson, Vice President of Operations. At the time of the April 2011 Inspection, Mr. Simpson had worked at Shield Packaging for at least three years. Mr. Simpson was identified in the Facility's hazardous waste contingency plan and on the emergency posting near the HWSA as an alternate emergency contact. Respondent provided no hazardous waste training records for Mr. A. Bruce Simpson.

j. Jeff Gendron, Shipping Employee. Mr. Gendron signed the generator block for Shield Packaging hazardous waste manifest numbers 003429922FLE (issued 8/9/10) and 003999805FLE (issued 3/10/11), corresponding to a shipment of twenty-five (25) 55-gallon drums of hazardous waste and a shipment of twenty-nine (29) 55-gallon drums of hazardous waste, respectively. Respondent provided proof of U.S. Department of Transportation training but failed to provide any proof of RCRA hazardous waste training received by Mr. Gendron.

k. Rosanne Wheeler, Shipping Employee. Ms. Wheeler signed the generator block for Shield Packaging hazardous waste manifest number 004428340FLE (issued 1/20/11), corresponding to a shipment of twenty-eight (28) 55-gallon drums of hazardous waste. Respondent provided proof of U.S. Department of Transportation training but failed to provide any proof of RCRA hazardous waste training received by Ms. Wheeler.

l. Thomas Wales, Warehouse Supervisor. Mr. Wales signed the generator block for Shield Packaging hazardous waste manifest number 004000424FLE (issued 10/28/10), corresponding to a shipment of forty-four (44) 55-gallon drums of hazardous waste. Respondent provided no hazardous waste training records for Mr. Wales.

116. At the time of the April 2011 Inspection, Respondent was not preparing or maintaining copies of required records for a hazardous waste management training program. Specifically, Respondent failed to prepare a written personnel training plan that included the job title for each position at the Facility relating to hazardous waste management, a written job description for each such position, a written description of the type and amount of both introductory and continuing training that will be given to each individual filling such a position, and records that document that the required training has been given to, and satisfactorily completed by, specified personnel. During the April 2011 Inspection, Respondent provided a copy of a document titled "Shield Packaging Co., Inc. Hazardous Waste Training Revision 2, dated 10/1/2002." This document was out-dated, did not include written descriptions of positions at the Facility with duties relating to hazardous waste management, and did not contain any requirement that personnel with hazardous waste management duties must be trained within six months of hire or reassignment or receive annual refresher training.

117. Respondent's failure to prepare a hazardous waste training program for the Facility and to keep records that document that the requisite training or job experience has been satisfactorily completed by facility personnel constitutes violations of 310 C.M.R. §§ 30.341(1)(a), 30.516(1)(a)-(e), and 30.516(2)(a)-(b).

CAA VIOLATIONS

Count 10: Failure to Update and Resubmit RMP

118. The allegations in paragraphs 1 through 117 are hereby realleged and incorporated herein by reference.

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

120. 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.

121. Propane, butane, isobutane, dimethyl ether (listed as methyl ether, CAS 115-10-6), and difluoroethane are RMP chemicals listed under 40 C.F.R. § 68.130, each having a threshold quantity of 10,000 pounds.

122. The use, storage, manufacturing, handling or on-site movement of an RMP chemical at the Facility (in any vessel, group of interconnected vessels, or separate vessels that are located such that a regulated substance could be involved in a potential release) is a "process," as defined by 40 C.F.R. § 68.3.

123. The Facility's propellant-filling production lines, which are comprised of a series of interconnected vessels, use propane, butane, isobutane, dimethyl ether, difluoroethane, or a mixture of these, each an RMP Chemical. These production lines are therefore "processes," as defined by 40 C.F.R. § 68.3.

124. The Facility's storage of finished aerosol cans filled with product and RMP chemical propellants in the warehouse building is also a "process," as defined by 40 C.F.R. § 68.3.

125. According to the Responses, the following RMP chemicals were used in propellant-filling production line processes at the Facility from at least 2008 to 2011 in quantities greater than 10,000 pounds each: butane/propane blend (CAS# 74-98-6); isobutane (CAS# 75-28-5); propane (CAS# 74-98-6); propane/isobutane blend (CAS# 68476-86-8).

126. The Facility's Risk Management Program and Safety Management Program, dated January 2008 (the Facility's "RMP") states that the Facility operates a process in which compressed propane, butane, and isobutane are stored, transported, and processed in quantities greater than 10,000 pounds.

127. According to the Responses and observations by EPA during the Inspections, dimethyl ether was used, stored, and handled in a propellant-filling production line process at the Facility in an amount greater than 10,000 pounds (the threshold under 40 C.F.R. § 68.130) in 2010, 2011, and 2012, and difluoroethane was used, stored, and handled in a propellant-filling production line process at the Facility in an amount greater than 10,000 pounds (the threshold under 40 C.F.R. § 68.130) in 2007, 2008, 2010, and 2011. The Facility's RMP does not address these RMP chemicals or processes.

128. According to the May 25, 2012 Response, the following RMP chemicals were stored in filled aerosol cans at the Facility in amounts greater than 10,000 pounds each (the threshold under 40 C.F.R. § 68.130) in the following years: propane in 2008-2012; butane in 2008-2012; isobutane in 2009-2012; and difluoroethane in 2010-2011. The Facility's RMP does not address these aerosol can storage processes.

129. The endpoint for a worst case release of 10,000 pounds of propane, butane, isobutane, dimethyl ether, or difluoroethane at the Facility is greater than the distance to a public receptor.

130. Propane, butane, isobutane, dimethyl ether, and difluoroethane in amounts over the threshold quantity of 10,000 pounds are each subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119.

131. As the owner and operator of a stationary source that has more than the threshold amount of several RMP Chemicals in covered processes, Respondent is subject to the RMP provisions of Part 68. In accordance with 40 C.F.R. § 68.10(a)-(d), Respondent's use, storage, and handling of propane, butane, isobutane, dimethyl ether, and difluoroethane at the Facility are subject to the requirements of RMP Program 3. The covered processes are subject to Program 3 because (1) the distance to a toxic or flammable endpoint for a worst-case release of each of propane, butane, isobutane, dimethyl ether, and difluoroethane is more than the distance to a public receptor, making the processes ineligible for Program 1; and (2) the processes are subject to OSHA's PSM regulations.

132. From at least 2008 through the filing of this Complaint, Respondent stored, handled, and used propane, butane, and isobutane in the propellant filling production line and/or aerosol storage processes at the Facility in amounts that exceeded the 10,000 pound threshold for each set forth in 40 C.F.R. § 68.130.

133. Such storage, handling, and use of propane, butane, and isobutane, RMP chemicals, in the propellant-filling production line or in the aerosol storage process at the Facility is each a "covered process," as that term is defined in 40 C.F.R. § 68.3.

134. Pursuant to 40 C.F.R. §§ 68.10 and 68.12, Respondent was required to implement a Level 3 Risk Management Program for the use, handling, and storage of propane, butane, and isobutane in quantities over the 10,000 pound threshold.

135. Pursuant to 40 C.F.R. § 68.190(b)(1), Respondent is required to review, update, and resubmit the Facility's RMP at least once every five years from the date of its initial submission or most recent update.

136. On June 21, 1999, Respondent submitted the Facility's RMP for its use, storage, and handling of propane, butane, and isobutane at the Facility.

137. Pursuant to 40 C.F.R. § 68.190(b)(1), Respondent was required to review, update, and resubmit the Facility's RMP no later than June 21, 2004. Respondent's next required update was due five years later, by June 21, 2009.

138. On August 9, 2006, an authorized representative of EPA conducted a compliance inspection of the Facility and discovered, among other things, that the Facility was not in compliance with 40 C.F.R. § 68.190, which required that the initial RMP be reviewed, updated, and resubmitted by June 21, 2004.

139. On May 24, 2007, Respondent signed a settlement agreement with EPA, by which Respondent agreed to pay a civil penalty of $2,370 and certified that Respondent had corrected the violations identified during the August 2006 inspection. The settlement agreement was ordered by the Regional Judicial Officer on July 2, 2007.

140. Although Respondent certified in the settlement agreement that it had corrected the violations, Respondent failed to review, update, and resubmit the Facility's initial RMP until July 8, 2009—two years after the settlement agreement was effective and two weeks after Respondent was required to review, update, and resubmit its RMP for the *second* time.

141. By failing to review, update, and resubmit an RMP for propane, butane, and isobutane, from at least June 21, 2004 until July 8, 2009, Respondent violated Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), and 40 C.F.R. § 68.190(b).

Count 11: Failure to Submit an RMP for Dimethyl Ether, Difluoroethane, and the Facility's Storage of Propane, Butane, Isobutane, and Difluoroethane in Aerosol Cans

142. The allegations in paragraphs 1 through 141 are hereby realleged and incorporated herein by reference.

143. At least in 2010 and 2012, Respondent stored, handled, and used dimethyl ether in a propellant-filling production line process at the Facility in an amount that exceeded the 10,000 pound threshold for each set forth in 40 C.F.R. § 68.130.

144. At least in 2007, 2008, 2010 and 2011, Respondent stored, handled, and used difluoroethane in a propellant filling production line process at the Facility in an amount that exceeded the 10,000 pound threshold for each set forth in 40 C.F.R. § 68.130. In 2010 and 2011, Respondent also stored difluoroethane in filled aerosol cans in one room at the Facility in an amount greater than 10,000 pounds.

145. At least in 2008, 2009, 2010, 2011, and 2012, Respondent stored propane and butane in filled aerosol cans in one room at the Facility in amounts that exceeded the 10,000 pound threshold for each set forth in 40 C.F.R. § 68.130. At least in 2009, 2010, 2011 and 2012, Respondent stored isobutane in filled aerosol cans in one room at the Facility in amounts that exceeded the 10,000 pound threshold set forth in 40 C.F.R. § 68.130.

146. Such storage, handling, and use of dimethyl ether, difluoroethane, propane, butane, and isobutane, RMP chemicals, is each a "covered process," as that term is defined in 40 C.F.R. § 68.3.

147. Pursuant to 40 C.F.R. §§ 68.10 and 68.12, Respondent was required to implement a Level 3 Risk Management Program for the use, handling, and storage of dimethyl ether, difluoroethane, propane, butane, and isobutane in quantities over the 10,000 pound threshold.

148. Under 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, Respondent was required to prepare and submit an RMP for dimethyl ether and difluoroethane documenting such compliance before they began using those chemicals at the Facility.

149. Under 40 C.F.R. §§ 68.12 and 68.150, Respondent was required to prepare and submit an RMP that reflects *all* covered processes, including the filled aerosol cans storage process.

150. By failing to submit an RMP for dimethyl ether and difluoroethane before using those chemicals at the Facility in amounts that exceeded the regulatory thresholds in at least 2007, 2008, 2010, 2011, and 2012, and by failing to submit an RMP that addressed the storage of propane, butane, isobutane, and difluoroethane in filled aerosol cans at the Facility in at least 2008, 2009, 2010, 2011, and 2012, Respondent violated Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150.

Count 12: Failure to Compile Process Safety Information for All Processes

151. The allegations in paragraphs 1 through 150 are hereby realleged and incorporated herein by reference.

152. Under 40 C.F.R. § 68.65, the owner or operator of a stationary source with processes subject to RMP Program 3 requirements must compile written process safety information for all processes, including information pertaining to the hazards of the regulated substances, information pertaining to the technology of the processes, and information pertaining to the equipment in the processes. In addition, the owner or operator must document that equipment complies with recognized and generally accepted good engineering standards. For

existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator must determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

153. The Facility's RMP contains information pertaining to the hazards of propane, butane, and isobutane, but fails to include information pertaining to the hazards of dimethyl ether or difluoroethane.

154. The Facility's RMP lists equipment used in the propane, butane, and isobutane processes, specifications for that equipment, and specifies "ASME" as the standard that applies to that equipment, but fails to identify which specific ASME standards from which years apply. The Facility's RMP also fails to include information pertaining to the technology and equipment for processes that use dimethyl ether and difluoroethane. These deficiencies are insufficient to support a proper mechanical integrity program.

155. Accordingly, Respondent violated the requirements to compile process safety information found in 40 C.F.R. §§ 68.12(d)(3) and 68.65. Such violations are also violations of Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 13: Failure to Adequately Identify Process Hazards for All Processes

156. The allegations in paragraphs 1 through 155 are hereby realleged and incorporated herein by reference.

157. Under 40 C.F.R. § 68.67, the owner or operator of a stationary source with processes subject to RMP Program 3 requirements must perform a process hazards analysis on all covered processes at the Facility that addresses, among other things, the hazards of the process, engineering and administrative controls applicable to the hazards and their interrelationships, consequences of failure of engineering and administrative controls, human factors, and a qualitative evaluation of a range of the possible safety and health effects of failure

of controls. The owner or operator must establish a system to promptly address the findings and recommendations made as a result of the process hazard analysis and assure that the recommendations are addressed and those actions documented.

158. During the December Inspection, EPA inspectors observed several dangerous conditions that should have been identified and resolved in performance of a process hazard analysis of the Facility, including but not limited to poor labeling of valves for propellants piped in from outside tanks, a label of "propellant varies" on Tank 22 rather than identification of the tank's specific contents, an NFPA hazard diamond placard on Tank 22 that did not accurately reflect the tank's contents, and dangerous storage conditions of large quantities of materials in the Facility's warehouse on floors above the propellant-filling process that could exacerbate a fire. None of those dangerous conditions were identified or addressed by the Facility's process hazard analysis.

159. The Facility's RMP did not contain a process hazard analysis that addressed the Facility's use of dimethyl ether or difluoroethane, RMP chemicals, or hazards associated with the filled aerosol cans storage process.

160. In addition, the process hazard analysis contained in the Facility's RMP was deficient because Respondent failed to document its process hazard analyses. Examples of such deficiencies include, but are not limited to:

a. No documentation of resolution of any recommendations made as a result of the process hazard analyses;

b. No documentation to support the responses to the checklist attached as Appendix F to the Facility's RMP; and

c. No documentation to support the certification that certain named employees demonstrated the knowledge, skill, and ability to safely carry out duties outlined in the process hazard analysis and that those employees were tested and found competent to perform certain job duties as described in the Facility's process hazard analysis.

161. Accordingly, Respondent violated the requirements to perform and document performance of a process hazard analysis for each covered process at the Facility found in 40 C.F.R. §§ 68.12(d)(3) and 68.67. Such violations were also violations of Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 14: Failure to Comply with Operating Procedures Requirements for Dimethyl Ether and Difluoroethane

162. The allegations in paragraphs 1 through 161 are hereby realleged and incorporated herein by reference.

163. Under 40 C.F.R. § 68.69, the owner or operator of a stationary source with processes subject to RMP Program 3 requirements must develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process at a facility, including steps for each operating phase, operating limits, safety and health considerations, including properties and hazards of the chemicals used in each process, and safety systems and their functions.

164. The Facility's RMP failed to include operating procedures for the use of dimethyl ether and difluoroethane in covered processes at the Facility.

165. Accordingly, Respondent violated the requirement to develop and implement operating procedures that provide clear instructions for safely conducting activities involved in each covered process found in 40 C.F.R. §§ 68.12(d)(3) and 68.69. Such violations were also violations of Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 15: Failure to Comply with Training Requirements for All Processes

166. The allegations in paragraphs 1 through 165 are hereby realleged and incorporated herein by reference.

167. Under 40 C.F.R. § 68.71, each employee involved in operating a covered process subject to RMP Program 3 requirements must be trained in an overview of the process and in the operating procedures for that process, including an emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. Refresher training must be provided at least every three years, and more often if necessary. The owner or operator must maintain documentation of meeting these training requirements.

168. Respondent failed to provide training to employees on processes using dimethyl ether and difluoroethane and on operating procedures for those processes. The Facility's RMP indicates that employees were given some training on other processes at the Facility, but the effectiveness of that training was diminished by the deficiencies in the Facility's RMP's operating procedures and process safety information, as described in Counts 12 and 14 above.

169. Respondent failed to provide refresher training to any employees on any covered processes, including but not limited to the propane, butane, isobutane, dimethyl ether, difluoroethane, and aerosol can storage processes.

170. Accordingly, Respondent violated the requirement to train each employee involved in operating a covered process at the Facility found in 40 C.F.R. §§ 68.12(d)(3) and 68.71. Such violations were also violations of Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 16: Failure to Comply with Mechanical Integrity Requirements for All Processes

171. The allegations in paragraphs 1 through 170 are hereby realleged and incorporated herein by reference.

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

173. Respondent failed to perform adequate inspections of outdoor tanks and other process equipment. According to the Facility's RMP, Facility maintenance staff conduct routine in-house inspections of all process equipment, all process equipment is tested annually for mechanical integrity, and all tanks at the Facility with a capacity of 10,000 gallons or greater must be inspected annually by a Massachusetts registered Professional Engineer, in accordance with 522 C.M.R. § 5.00, using a checklist provided by the State Fire Marshall.

174. However, at the time of the December Inspection, Respondent was unable to document any routine in-house inspections or annual mechanical integrity testing other than by providing copies of the State Fire Marshall checklists used to inspect tanks with a capacity of 10,000 gallons or greater. Visual inspections alone, if they were performed, are insufficient to meet recognized and generally accepted good engineering practices.

175. Moreover, the State Fire Marshall checklists appended to the Facility's RMP demonstrate that these inspections failed to meet the mechanical integrity requirements for Program 3 processes under the RMP regulations. The date of construction/manufacture of each

tank, tank construction standard, whether the tank was constructed to the "API 650 or 12C" standards, and whether the tank was constructed in accordance with a nationally recognized tank specification are all "Unknown" according to the State Fire Marshall inspection forms attached to the Facility's RMP.

176. Accordingly, Respondent violated the mechanical integrity requirements found in 40 C.F.R. §§ 68.12(d)(3) and 68.73 for each covered process at the Facility. Such violations are also violations of Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

177. Respondent is therefore subject to an assessment of penalties under Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. Part 19, for the violations alleged in Counts 10 through 16.

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

EPCRA VIOLATIONS

Count 17: Failure to Submit Tier 2 Form

179. The allegations in paragraphs 1 through 178 are hereby realleged and incorporated herein by reference.

180. Respondent is an owner or operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

181. In at least December 2010, Respondent stored the following chemicals, which are "hazardous chemicals" as defined under 40 C.F.R. § 370.66, at the Facility, each in a quantity

that exceeds the minimum threshold level ("MTL") set forth in 40 C.F.R. § 370.10: Synthemul DX-101-90; Polychem 7536-M-70; WD-40 Super Concentrate; Three-In-One Oil; Corsol 100/Coastal; Lithium Grease White #2; Dowanol PnB (Glycol Ether PnB); and Homax Wall Texture (Hamilton Part 28510).

182. In at least July 2007, November 2008, June 2010, and November 2011, Respondent stored difluoroethane, a "hazardous chemical" as defined under 40 C.F.R. § 370.66, at the Facility in a quantity that exceeds the MTL set forth in 40 C.F.R. § 370.10.

183. At all times relevant to the violations cited herein, Respondent was required, pursuant to the Occupational Safety and Health Act of 1970 ("OSHA") and regulations promulgated thereunder, to prepare or have available onsite a MSDS for each of the chemicals listed in paragraphs 181 and 182 herein.

184. During calendar year 2010, Respondent stored at least nine hazardous chemicals, listed in paragraphs 181 and 182 herein, at the Facility in a quantity that exceeds the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.10.

185. During calendar years 2007, 2008, 2010, and 2011 Respondent stored difluoroethane, a hazardous chemical, at the Facility in a quantity that exceeds the MTL of 10,0000 pounds set forth in 40 C.F.R. § 370.10.

186. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, Respondent was required to prepare and submit an emergency and hazardous chemical inventory (Tier 2) form to the SERC, LEPC and the local fire department with jurisdiction over the Facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for each calendar year from at least 2007 to 2011, on or before March 1st of the following calendar year.

187. Respondent prepared and timely submitted Tier 2 forms for calendar years 2007, 2008, 2010, and 2011 to the SERC, LEPC, and the local fire department, but failed to include information regarding the hazardous chemical difluoroethane, in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

188. Respondent prepared and submitted a Tier 2 form for calendar year 2010 by March 1, 2011 to the SERC, LEPC and the local fire department, but failed to include information regarding the hazardous chemicals identified in paragraphs 181 and 182 herein, in violation of the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

189. Respondent is therefore subject to an assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and the Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, as mandated by the DCIA, 31 U.S.C. §§ 3701 *et seq.*, which collectively authorize EPA to asses a civil penalty for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and regulations promulgated thereunder, in amounts of up to $32,500 per day for each day of violation that occurs between March 16, 2004 and January 12, 2009; and up to $37,500 per day for each day of violation that occurs after January 12, 2009.

CWA VIOLATIONS

Count 18: Failure to Properly Maintain and Fully Implement SPCC Plan

190. The allegations in paragraphs 1 through 189 are hereby realleged and incorporated herein by reference.

191. Respondent controls all daily business and industrial operations at the Facility, and otherwise meets the definition of "operator" of the Facility, as defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

192. At all times relevant to the allegations in this Complaint, Respondent engaged in storing, using, and consuming "oil" or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

193. At all times relevant to the allegations in this Complaint, the Facility had an aggregate above ground oil storage capacity greater than 1,320 gallons in containers each with a shell capacity of at least 55 gallons.

194. The Facility is located in the French River flood plain.

195. The Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

196. The Facility is a "non-transportation-related" facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

197. Accordingly, the Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to navigable waters of the United States or its adjoining shorelines in a harmful quantity.

198. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the Facility.

199. Pursuant to 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated onshore facility in operation prior to August 16, 2002, must maintain and implement an SPCC plan that is in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8.

200. The Facility is an onshore facility that became operational prior to August 16, 2002.

201. During the April 2012 Inspection and based on additional information submitted by Respondent, EPA determined that the Site had an SPCC Plan, but the SPCC Plan was

deficient and Respondent neither maintained nor fully implemented the SPCC Plan, in violation of Section 311(j) of the Act. Respondent failed to adequately provide for measures which would prevent the discharge of oil from reaching waters of the United States and failed to implement specific requirements listed in 40 C.F.R. §§ 112.7 and 112.8, in accordance with good engineering practice.

202. Under 40 C.F.R. § 112.3(d), a licensed Professional Engineer must review and certify a SPCC Plan for it to be effective to satisfy the requirements of 40 C.F.R. Part 112. The Professional Engineer must attest that the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, that procedures for required inspections and testing have been established, and that the Plan is adequate for the Facility.

203. Under 40 C.F.R. §§ 112.7(d)-(e) and 112.8(c)(6), an owner or operator of an onshore facility subject to the requirements of 40 C.F.R. Part 112 must conduct periodic integrity testing for all bulk oil storage containers and periodic integrity and leak testing of the valves and piping for such containers, and must keep records of those inspections and tests for at least three years.

204. Under 40 C.F.R. § 112.7(g), an owner or operator of an onshore facility subject to the requirements of 40 C.F.R. Part 112 must describe in its SPCC Plan, among other things, how the facility will secure and control access to the oil handling and address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

205. Under 40 C.F.R. § 112.7(a)(3)(iii), an owner or operator of an onshore facility subject to the requirements of 40 C.F.R. Part 112 must describe in its SPCC plan, among other

things, discharge or drainage controls, such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

206. Section 3.1.2 of the Facility's SPCC Plan, dated January 31, 2008, mandates a schedule of required integrity and leak testing for the Facility's bulk storage containers.

207. Pursuant to Section 9.0 of the Facility's SPCC Plan, Respondent was required to conduct tank integrity testing for all in-service aboveground storage tanks by no later than December 30, 2008, in order for the Professional Engineer certification of the Plan to be valid.

208. Respondent failed to conduct the required tank integrity testing for its aboveground storage containers, in violation of 40 C.F.R. §§ 112.7(d)-(e) and 112.8(c)(6).

209. Respondent failed to provide facility lighting in areas where oil transfers occurred, which affected Respondent's ability to prevent, detect, or respond to potential oil spills on site, in violation of 40 C.F.R. § 112.7(g).

210. Stormwater from certain catch basins within the Facility's tank farm is directed to a sump which contains a pump. Respondent failed to identify and describe the sump structure and pumping system in the SPCC plan, in violation of 40 C.F.R. § 112.7(a)(3)(iii).

211. Respondent's failure to properly maintain and fully implement a SPCC Plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described above, violated 40 C.F.R. § 112.3. Respondent violated these requirements from at least January 1, 2009 through the filing of this Complaint.

V. ORDER

212. Based on the foregoing findings, Respondent is hereby **ORDERED** to achieve and maintain compliance with all applicable requirements of RCRA and the Massachusetts Hazardous Waste Regulations, specifically including compliance with the following requirements:

a. Immediately upon receipt of this Complaint, Respondent shall determine whether all wastes at the Facility are hazardous wastes subject to appropriate hazardous waste management requirements in the Massachusetts Hazardous Waste Regulations, in accordance with 310 C.M.R. § 30.302 and 40 C.F.R. §§ 262.11, 268.7(a);

b. Immediately upon receipt of this Complaint, Respondent shall close, date, label, and otherwise manage all hazardous waste and universal waste identified at the Facility in accordance with federal and state standards, including 310 C.M.R. §§ 30.341(2), 30.342, 30.343, and 30.1034, and 40 C.F.R. §§ 262.34(a), 265.173(a), 273.13, 273.14, and 273.15;

c. Immediately upon receipt of this Complaint, Respondent shall provide adequate aisle space between containers of hazardous waste in the HWSA, in accordance with 310 C.M.R. §§ 30.341(1)(e), 30.342(1)(c), and 30.685(4), and 40 C.F.R. §§ 262.34(a)(4) and 265.35;

d. Immediately upon receipt of this Complaint, Respondent shall ensure the implementation of emergency prevention and response measures in order to minimize the possibility of a fire, explosion, or sudden release of hazardous waste at the Facility, in accordance with 310 C.M.R. §§ 30.341(1)(e) and 30.524, and 40 C.F.R. §§ 262.34(a)(4), 265.52(d)-(f), and 265.53;

e. Immediately upon receipt of this Complaint, Respondent shall implement practices to ensure that areas where hazardous waste are stored at the Facility are inspected at least weekly, and prepare and maintain required records of those inspections, in accordance with 310 C.M.R. §§ 30.142(1)(d) and 30.686, and 40 C.F.R. §§ 262.34(a)(1)(i), 265.174;

f. Within thirty (30) days of receipt of this Complaint, Respondent shall update the contingency plan and submit the revised contingency plan, and any subsequent

revisions thereto, to the required authorities and emergency responders in accordance with 310 C.M.R. §§ 30.341(1)(b)-(d), 310.521, and 40 C.F.R. §§ 262.34(a)(4), 265.52, 265.53, 265.55; and

g. Within thirty (30) days of receipt of this Complaint, and annually thereafter, Respondent shall provide hazardous waste management training to all employees at the Facility with hazardous waste management responsibilities and maintain the required documents and records, in accordance with 310 C.M.R. §§ 30.341(1)(a), 30.516(1)(a)-(e), and 30.516(2)(a)-(b), and 40 C.F.R. §§ 262.34(a)(4) and 265.16.

213. Within sixty-five (65) days of receipt of this Complaint, Respondent shall submit to Complainant written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in paragraph 212 above. Any notice of noncompliance required under this paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance. Respondent shall submit the above required information and notices to:

Susann D. Nachmann, Environmental Engineer
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES05-1)
Boston, MA 02109-3912

and

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

214. If Respondent fails to comply with the requirements of this Complaint within the time specified, Section 3008(c) of RCRA, 42 U.S.C. § 6928, provides for further enforcement

action in which EPA may seek the imposition of additional penalties of up to $37,500 for each day of continued noncompliance.

215. This Complaint shall become effective immediately upon receipt by Respondent.

216. In accordance with 40 C.F.R. § 22.37(b), this Order shall automatically become a final order unless, no later than 30 days after the Order is served, the Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.

VI. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

RCRA PENALTIES

217. 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.

218. Based on the foregoing allegations and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. §§ 2461 *et seq.*, the DCIA, 31 U.S.C. §§ 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, Complainant seeks to assess Respondent civil penalties of up to $37,500 per day per violation of RCRA for at least:

a. Four violations by Respondent for failing to make hazardous waste determinations on at least four categories of waste streams. These violations are significant

because without making hazardous waste determinations, a facility may not implement the appropriate hazardous waste management procedures required by RCRA, and hence, may increase the risk of exposure to human and/or environmental receptors.

b. One violation by Respondent for failing to keep hazardous waste and universal waste containers closed, except when necessary to add or remove waste. This violation is significant because the failure keep such containers closed increases the potential for direct contact of personnel with hazardous wastes, emissions of volatile wastes, reaction, ignition, spills, and/or commingling of incompatible wastes.

c. One violation by Respondent for failing to properly label hazardous waste and universal waste containers. This violation is significant because Respondent's failure to properly label hazardous waste containers and universal waste lamps increases the potential for mismanagement and hampers emergency responders' ability to identify the contents of such containers.

d. One violation by Respondent for failing to date hazardous waste and universal waste containers. This violation is significant because the failure to mark hazardous waste and universal waste containers with the accumulation start date increases the potential that such wastes would be stored for more than the 90 days allowed under the Massachusetts Hazardous Waste Regulations. A facility that stores hazardous waste for longer than 90 days is required to get a permit which imposes additional requirements to ensure the safe and proper management of waste. Such long-term storage without a permit increases the likelihood of mismanagement and contamination due to leaks and spills.

e. One violation by Respondent for failing to maintain adequate aisle space. This violation is significant because inadequate aisle space impedes the detection and correction

of conditions that may lead to a release, fire and/or explosion, and hampers the timely and effective access of emergency responders and equipment to compromised containers.

f. One violation by Respondent for failing to meet standards for emergency prevention and response in order to minimize the possibility of a fire, explosion or sudden release of hazardous waste and to properly operate and maintain all facilities and systems of treatment and control in eight areas of the Facility. This violation is significant because each of the violations (including the missing emergency response equipment and evacuation route information posted near the HWSA, the broken glass from mercury-containing lamps in the universal waste storage area, and the uncontrolled access to the HWSA and storage of metal tools in an area which likely had releases of volatile emissions from open hazardous waste storage containers) increased potential harm to the health and welfare to employees, first responders, transporters, federal and state inspectors, and anyone else in the area.

g. At least 180 days of violation by Respondent for failing to conduct inspections of the HWSA. This violation is significant because weekly inspections are necessary to ensure that hazardous waste management problems are detected early and remedied promptly. Moreover, poorly documented inspection logs prevent Facility personnel from being able to clearly demonstrate whether inspections revealed problems, and how and when such problems were remedied to prevent harm to human health and the environment.

h. One violation by Respondent for failing to maintain an adequate hazardous waste contingency plan. This violation is significant because the appointment of an emergency coordinator who is trained in hazardous waste management, familiar with the Facility's hazardous waste streams, and prepared to carry out emergency procedures in the event of a hazardous waste spill or release, and maintaining updated contact information for alternate

emergency contacts is necessary in order for the Facility personnel to be able to detect hazardous waste management problems and respond quickly in the event of an emergency situation.

i. Thirty-two violations by Respondent for failing to implement an adequate hazardous waste management training program. These violations are significant because adequately training personnel who handle or manage hazardous waste to do so in accordance with federal and state regulations is an essential part of hazardous waste management, and improper handling of hazardous waste increases the likelihood of releases and employee exposure to those releases.

CAA PENALTIES

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

220. Based on the foregoing allegations and pursuant to the authority of Section 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), as amended, the Federal Civil

Penalties Inflation Act of 1990, 28 U.S.C. §§ 2461 *et seq.*, the DCIA, 31 U.S.C. §§ 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, Complainant seeks to assess civil penalties against Respondent of up to $32,500 per day for each day prior to and including January 12, 2009, during which the violations continued, and up to $37,500 per day for each day thereafter (up to a maximum of $295,000), for the duration of the following CAA violations:

a. One violation by Respondent, for up to 646 days, for failing to update and resubmit the Facility's RMP. This violation is significant because an RMP helps facility personnel and emergency responders to assess and manage the hazards that are posed by chemicals at a facility so that the threat and impacts of releases are minimized, and their ability to manage those hazards is hampered when information in the RMP is not regularly updated.

b. One violation by Respondent, for up to 1,282 days, for failing to prepare and submit an RMP for the use of dimethyl ether and difluoroethane and the storage of propane, butane, isobutane, and difluoroethane in aerosol cans at the Facility. This violation is significant because of the extent and duration of the violation and because of the potential environmental consequences of a release of dimethyl ether or difluoroethane, which are very dangerous chemicals.

c. One violation by Respondent, for up to 1,282 days, for failing to compile process safety information for all processes at the Facility. This violation is significant because dimethyl ether and difluoroethane are extremely hazardous chemicals. Compiling proper process safety information allows a facility to develop a good mechanical integrity program.

d. One violation by Respondent, for up to 1,282 days, for failing to adequately identify process hazards for all processes at the Facility. This violation is significant

because without proper hazard analyses for all chemicals and processes at the Facility, Respondent was unable to design and maintain the Facility in a way that considers those potential hazards and will minimize the consequences of any accidental releases that do occur.

e. One violation by Respondent, for up to 1,282 days, for failing to comply with operating procedures requirements for the dimethyl ether and difluoroethane processes at the Facility. This violation is significant because of the extent and duration of the violation and because failing have operating procedures in place increases the risk that dangerous chemicals will be mishandled.

f. One violation by Respondent, for up to 995 days, for failing to adequately train each employee involved in operating a covered process involving an RMP chemical. This violation is significant because the RMP chemicals at the Facility were extremely hazardous and because providing refresher training every three years to employees that work with RMP chemicals and covered processes decreases the risk of an accidental release or incident involving the chemical.

g. One violation by Respondent, for up to 1,819 days, for failing to comply with mechanical integrity requirements for the dimethyl ether and difluoroethane processes at the Facility. This violation is significant because ensuring the mechanical integrity of equipment used to pressurize highly flammable gases at the Facility will decrease the risk of an accidental release or other emergency involving the RMP chemicals.

EPCRA PENALTIES

221. In determining the amount of any penalty to be assessed for the EPCRA violations alleged above, in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), EPA will take into account the nature, circumstances, extent and gravity of the violations, and, with respect to the Respondent, its ability to pay, prior history of violations, degree of

culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, dated September 30, 1999 (the "EPCRA Penalty Policy") and updated penalty matrices, a copy of which is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

222. Based on the foregoing allegations and pursuant to the authority of Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. §§ 2461 *et seq.*, the DCIA, 31 U.S.C. §§ 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, Complainant seeks to assess civil penalties against Respondent of up to $32,500 per day for each day prior to and including January 12, 2009, during which the violations continued, and up to $37,500 per day for each day thereafter, for the duration of the following EPCRA violations:

a. Three violations by Respondent for failing to include all hazardous chemicals at the Facility in quantities over the MTL on Tier 2 forms submitted to the SERC, LEPC, and fire department. These violations are significant because failure to report the presence of hazardous chemicals may deprive the community of its right to know about chemicals used or stored near or in the neighborhood that may affect public health and the environment, and may prevent comprehensive planning by federal, state and local authorities to properly prepare for and respond to accidental chemical releases.

CWA PENALTIES

223. In determining the amount of any penalty to be assessed for the CWA violations alleged above, pursuant to Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA will take into account the seriousness of the violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

224. Based upon the foregoing allegations and pursuant to the authority of Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §§ 2461 *et seq.*, the DCIA, 31 U.S.C. §§ 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, Complainant seeks to assess civil penalties against Respondent of up to $11,000 per day for each day prior to and including January 12, 2009, during which the violations continued, and up to $16,000 per day for each day thereafter (up to a maximum of $177,500), for the duration of the following CWA violations:

a. One violation by Respondent, for up to 1,360 days, for failing to properly maintain and fully implement a SPCC Plan for the Facility. This violation is significant because failure to maintain and fully implement an adequate SPCC plan leaves a facility unprepared to deal with an oil spill and to prevent a spill from having potentially serious environmental consequences.

225. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for all counts in the Complaint, as required by the Consolidated Rules of Practice.

Complainant will calculate a proposed penalty for the violations alleged in this Complaint based, in part, on its current knowledge of Respondent's financial condition and ability to pay a penalty.

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

226. Pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), to comment on any proposed penalty and to be heard and to present evidence at the hearing. Any request for a hearing must be included in Respondent's written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

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

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

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

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

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

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

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

VIII. INFORMAL SETTLEMENT CONFERENCE

231. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. EPA has the authority to adjust penalties, where appropriate, to reflect

any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

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

IX. CONTINUED COMPLIANCE OBLIGATION

233. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with Section 3002 of RCRA, 42 U.S.C. § 6922; 40 C.F.R. Parts 262 and 265, Chapters 21C and 21E of the Massachusetts General Laws, the Massachusetts Hazardous Waste Regulations, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), 40 C.F.R. Part 68, Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), 40 C.F.R. Part 370, Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and 40 C.F.R. Part 112.

Susan Studlien

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

9/25/12
Date

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

September 25, 2012

BY HAND

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

Re: In the matter of Shield Packaging Company, Inc., Docket Nos. RCRA-01-2012-0101, CAA-01-2012-0102, EPCRA-01-2012-0103, CWA-01-2012-0104

Dear Ms. Santiago:

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

1. Administrative Complaint and Notice of Opportunity for Hearing; and

2. Certificate of Service.

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

Very truly yours,

Laura J. Berry
Enforcement Counsel

Enclosures

cc: George A. Bates, Shield Packaging Company, Inc.
A. Bruce Simpson, Shield Packaging Company, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF **SHIELD PACKAGING COMPANY, INC.** 50 Oxford Avenue Dudley, MA 01571 Respondent Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a), Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c), and Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)	Docket Nos. RCRA-01-2012-0101, CAA-01-2012-0102, EPCRA-01-2012-0103, CWA-01-2012-0104 **COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency Region 1 ("EPA") issues this administrative Complaint and Notice of Opportunity for Hearing ("Complaint") pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), and Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6). 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 Shield Packaging Company, Inc. ("Shield Packaging" or "Respondent") violated Section 3002 of RCRA, 42 U.S.C. § 6922; the regulations promulgated thereunder found at 40 C.F.R. Parts 262 and 265; Chapters 21C and 21E of the Massachusetts General Laws; and the regulations promulgated thereunder found at Title 310, Chapter 30 of the Code of Massachusetts Regulations.

3. This Complaint also alleges that Shield Packaging violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations set forth at 40 C.F.R. Part 68.

4. This Complaint also alleges that Shield Packaging violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the federal regulations that set out in greater detail its statutory requirements, found at 40 C.F.R. Part 370.

5. This Complaint also alleges that Shield Packaging violated Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and its implementing regulations set forth at 40 C.F.R. Part 112, by failing to properly maintain and fully implement a Spill Prevention, Control and Countermeasure ("SPCC") plan.

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

7. Notice of commencement of this action has been given to the Commonwealth of Massachusetts pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. APPLICABLE STATUTES AND REGULATIONS

RCRA Statutory and Regulatory Authority

8. RCRA was enacted on October 21, 1976, and amended thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). Subtitle C of RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. *See* 42 U.S.C. § 6921 *et seq.* Pursuant to Subtitle C of RCRA, EPA has promulgated regulations

that set forth standards and requirements applicable to generators of hazardous waste, as well as standards and requirements that are applicable to owners and operators of facilities that treat, store or dispose of hazardous waste. These regulations are codified at 40 C.F.R. Parts 260 through 271.

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

10. The Commonwealth of Massachusetts received final authorization to implement its base hazardous waste management program on January 24, 1985, with an effective date of February 7, 1985. 50 Fed. Reg. 3344. On September 30, 1998, EPA authorized Massachusetts to implement the Satellite Accumulation Rule as part of its hazardous waste management program, effective November 30, 1998. 63 Fed. Reg. 52180. On October 12, 1999, EPA authorized Massachusetts to implement the Toxicity Characteristics Rule and the Universal Waste Rule for all wastes other than cathode ray tubes ("CRTs"), effective October 12, 1999. 64 Fed. Reg. 55153. On November 15, 2000, EPA granted interim authorization to Massachusetts to regulate CRTs under the Toxicity Characteristics rule, effective immediately. 65 Fed. Reg. 68915. This interim authorization was subsequently extended to run through January 1, 2006 (67 Fed. Reg. 66338, Oct. 31, 2002), and further extended until January 1, 2011 (70 Fed. Reg. 69900, Nov. 18, 2005). On March 12, 2004, EPA authorized Massachusetts for updates to its hazardous waste program which generally track federal requirements through the July 1, 1990 edition of Title 40 of the Code of Federal Regulations (and in some cases beyond), including definitions and miscellaneous provisions, provisions for the identification and listing of

hazardous wastes and standards for hazardous waste generators, and other provisions. 69 Fed. Reg. 11801. On January 31, 2008, EPA authorized Massachusetts for revisions to its hazardous waste program addressing federal requirements for Corrective Action, Radioactive Mixed Waste, and the Hazardous Waste Manifest revisions, as well as various changes to its base program regulations, effective March 31, 2008. 73 Fed. Reg. 5753. On June 23, 2010, EPA authorized Massachusetts for certain portions of the Land Disposal Restriction element of the RCRA program, as well as other updates and revisions to its RCRA program, effective August 23, 2010. 75 Fed. Reg. 35660.

11. Promulgated pursuant to the authority granted by M.G.L. c. 21C, §§ 4 and 6, M.G.L. c. 21E, § 6, and by St. 1987, c. 587, § 47, Massachusetts's federally authorized hazardous waste management regulations are codified at Title 310, Chapter 30 of the Code of Massachusetts Regulations ("C.M.R."), 310 C.M.R. §§ 30.0001 *et seq*. (the "Massachusetts Hazardous Waste Regulations").

12. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA (Sections 3001-3023), 42 U.S.C. §§ 6921-6939e. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), the Administrator may enforce violations of any requirement of Subtitle C of RCRA, including the federally-approved Massachusetts hazardous waste program and any federal regulations promulgated pursuant to HSWA for which the State did not receive authorization, by issuing an order assessing a civil penalty, requiring compliance immediately or within a specified time, or both.

13. Sections 3008(a)(3) and 3008(g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and 6928(g), as amended, provide for the assessment of a civil penalty not to exceed $25,000 per day of noncompliance for each violation of the requirements of Subtitle C of RCRA. In accordance with EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. §§ 3701 *et seq.*, the maximum civil penalty for violations of Subtitle C of RCRA occurring between March 16, 2004 up to and including January 12, 2009 was increased to $32,500 per day of violation, and the maximum civil penalty for violations occurring after January 12, 2009 was increased to $37,500 per day of violation.

CAA Statutory and Regulatory Authority

14. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of the accidental release of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to 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, and Section 112(r)(5), 42 U.S.C § 7412(r)(5), requires EPA to establish for each regulated substance a 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. 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, including a requirement that owners or operators of certain stationary sources prepare and implement a Risk Management Plan ("RMP").

15. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated RMP regulations, found at 40 C.F.R. Part 68 ("Part 68"). Section 68.130 of 40

C.F.R. lists the substances regulated under Part 68 ("RMP chemicals" or "regulated substances") and their associated threshold quantities.

16. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

17. A "process" is defined by 40 C.F.R. § 68.3 as any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

18. A "public receptor" is defined by 40 C.F.R. § 68.3 to include offsite residences, institutions (including schools and hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time where members of the public could be exposed to toxic concentrations, radiant heat, or overexposure, as a result of an accidental release.

19. Each process in which a regulated substance is present in more than a threshold quantity (a "covered process") is subject to one of three risk management programs, whose eligibility requirements are set forth in 40 C.F.R. § 68.10. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Under 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 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. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility

requirements for Program 1 and is either in certain specified NAICS codes or subject to the Occupational Safety and Health Administration ("OSHA") process safety management ("PSM") standard set forth at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

20. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source implement the chemical accident prevention provisions of Part 68 to which it is subject and submit an RMP. The RMP documents compliance with Part 68. For example, the RMP for a Program 3 process documents compliance with the elements of a Program 3 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 D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

21. Additionally, 40 C.F.R. § 68.190(b) dictates that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update.

22. Under Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), it is unlawful for any person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

23. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the DCIA, 31 U.S.C. §§ 3701 *et seq.*, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to

$32,500 per day for violations of the CAA occurring between March 16, 2004 and January 12, 2009, and up to $37,500 per day for violations of the CAA occurring after January 12, 2009.

24. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), EPA obtained from the Department of Justice a waiver of the twelve-month limitation on EPA's authority to initiate administrative cases.

EPCRA Statutory and Regulatory Authority

25. EPCRA was enacted on October 17, 1986, and establishes requirements for Federal, State and local governments and industry regarding emergency planning for, and reporting on, hazardous and toxic chemicals.

26. Under Section 312(a) of EPCRA, owners and operators of facilities that are required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder ("hazardous chemicals") must prepare and submit an emergency and hazardous chemical inventory form ("Tier 1" or "Tier 2" form) to the local emergency planning committee ("LEPC"), the state emergency response commission ("SERC"), and the local fire department. Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain information with respect to the preceding calendar year. The Commonwealth of Massachusetts requires the use of Tier 2 forms.

27. The regulations promulgated pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, are found at 40 C.F.R. Part 370 ("Part 370").

28. Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a). In accordance with Section 312(b) of EPCRA, 42 U.S.C.§ 11022(b), 40

C.F.R. § 370.10 establishes minimum threshold levels for hazardous chemicals for the purposes of 40 C.F.R. Part 370.

29. Under 40 C.F.R. §§ 370.20, 370.40, and 370.44, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level, as set forth in 40 C.F.R. § 370.10, must prepare and submit a Tier 1 or Tier 2 form to the LEPC, SERC and local fire department. Forty C.F.R. § 370.45(a) requires that Tier 1 or Tier 2 forms be submitted annually on or before March 1 and contain information relating to the preceding calendar year. Forty C.F.R. § 370.40(b) allows the LEPC, SERC or local fire department to request that a facility submit the more comprehensive Tier 2 form in lieu of the Tier 1 form.

30. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty of up to $25,000 per day of violation for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and regulations promulgated thereunder. The Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, as mandated by the DCIA, 31 U.S.C. §§ 3701 *et seq.*, authorizes the assessment of civil administrative penalties in amounts of up to $32,500 per day for each day of violation of EPCRA that occurs between March 16, 2004 and January 12, 2009; and up to $37,500 per day for each of violation of EPCRA that occurs after January 12, 2009.

CWA Statutory and Regulatory Authority

31. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), requires the President to, among other things, establish procedures, methods, and equipment and other requirements to prevent discharges of oil from vessels and from onshore and offshore facilities, and to contain any discharges that may occur.

32. Under the authority of Section 311(j)(1) of the CWA, the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112, establish procedures, methods, and requirements for preventing the discharge of oil.

33. Pursuant to 40 C.F.R. § 112.1(b), the various requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. However, except as provided in 40 C.F.R. § 112.1(f), these requirements do not apply to the owner or operator of any facility which meets both of the following requirements: (1) the completely buried storage capacity of the facility is 42,000 U.S. gallons or less of oil; and (2) the aggregate aboveground storage capacity of the facility is 1,320 U.S. gallons or less of oil. 40 C.F.R. § 112.1(d)(2).

34. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational prior to August 16, 2002, and that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful quantities into or upon the navigable waters of the United States must prepare and fully implement a Spill Prevention, Control and Countermeasure ("SPCC") plan in accordance with 40 C.F.R. § 112.7 and any other applicable sections of 40 C.F.R. Part 112.

35. Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), provides that any owner, operator or person in charge of any vessel, onshore facility or offshore facility who violates any regulation issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), shall be liable to the United States for a civil penalty in an amount of up to $10,000 per day for each

violation, up to a maximum of $125,000. Pursuant to the DCIA, 31 U.S.C. §§ 3701 *et seq.*, and the Civil Monetary Penalty Inflation Adjustment Rule promulgated thereunder at 40 C.F.R. Part 19, the inflation-adjusted civil penalty for a violation of Section 311(j) of the CAA, 33 U.S.C. § 1321(j), is up to $11,000 per day of violation, up to a maximum of $157,500, for violations occurring from March 16, 2004, through January 12, 2009, and up to $16,000 per day of violation, up to a maximum of $177,500, for violations occurring after January 12, 2009.

III. GENERAL ALLEGATIONS

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

37. Respondent is the operator of a liquid and aerosol packaging facility located at 50 Oxford Avenue in Dudley, Massachusetts (the "Facility").

38. The Facility is located on the banks of the French River, adjacent to a railway line, less than 0.1 miles from several residential houses, less than 0.3 miles from four churches and a public library, and less than 0.4 miles from two junior high schools.

39. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), Section 30.010 of Title 310 of the Massachusetts Hazardous Waste Regulations, 310 C.M.R. § 30.010, Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), 40 C.F.R. § 370.66, and Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

40. On December 9, 2010, five authorized representatives of EPA inspected the Facility (the "December Inspection"). The purpose of the December Inspection was, in part, to determine the Facility's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 302-312 of EPCRA, 42 U.S.C. §§ 11002-11022, and their implementing regulations.

41. On April 6 and 7, 2011, two authorized representatives of EPA inspected the Facility (the "April 2011 Inspection"). The purpose of the April 2011 Inspection was, in part, to determine the Facility's compliance with RCRA, 42 U.S.C. § 6901 *et seq.*, and its implementing regulations.

42. On April 25, 2012, an authorized representative of EPA inspected the Facility (the "April 2012 Inspection"). The purpose of the April 2012 Inspection was, in part, to determine the Facility's compliance with Section 311(j) of the CWA, 42 U.S.C. § 1321(j), and its implementing regulations.

43. On March 30, 2012, EPA sent Respondent a request for information ("Information Request") pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), and Section 3007 of RCRA, 42 U.S.C. § 6927.

44. On May 11, 2012, May 25, 2012, and June 1, 2012, Respondent submitted to EPA responses to the Information Request (each a "Response" and collectively, the "Responses").

45. EPA evaluated conditions observed at the Facility during the December Inspection, the April 2011 Inspection, and the April 2012 Inspection (collectively, the "Inspections"), and reviewed various documents supplied by Respondent prior to, during, and subsequent to the Inspections, including but not limited to the Responses, the Facility's hazardous waste records, chemical inventory records, SPCC plan, contingency plan, RMP, and other records. Based on the Inspections, the Responses, and other documents and information provided by Respondent prior to, during, and following the Inspections, EPA has identified the following alleged violations.

IV. VIOLATIONS

RCRA VIOLATIONS

Count 1: Failure to Conduct Hazardous Waste Determinations

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

47. At all times relevant to this Complaint, Respondent was an "owner" and/or "operator" of the Facility, as defined in 310 C.M.R. § 30.010 and 40 C.F.R. § 260.10.

48. On or about April 24, 1981, Respondent notified the Massachusetts Department of Environmental Protection ("MassDEP") that Respondent was operating as a generator of hazardous waste by submitting a Notification of Hazardous Waste Activity pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, and 310 C.M.R. § 30.061.

49. At all times relevant to this Complaint, Respondent generated "solid wastes," as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), 40 C.F.R. §§ 260.10 and 261.2, or "wastes," as defined in 310 C.M.R. § 30.010.

50. At all times relevant to this Complaint, at least some of the wastes that Respondent generated were "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 310 C.M.R. §§ 30.010 and 30.102(2).

51. At all times relevant to this Complaint, Respondent has been and is a "generator" of hazardous waste, within the meaning of 310 C.M.R. § 30.010 and 40 C.F.R. § 260.10.

52. Pursuant to 310 C.M.R. § 30.301(3), a person who generates a hazardous waste must comply with 310 C.M.R. § 30.000. Likewise, pursuant to 310 C.M.R. § 30.301(3), an owner or operator of a facility who initiates a shipment of hazardous waste from a facility shall comply with the generator requirements prescribed in 310 § C.M.R. 30.300.

53. Respondent, therefore, is subject to the federal and state standards applicable to generators of hazardous waste found at Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, the federal regulations promulgated at 40 C.F.R. Parts 260-271 and 279, and 310 C.M.R. § 30.300 *et seq*. The state standards for generators apply in lieu of the federal standards because EPA has authorized the state standards pursuant to RCRA § 3006.

54. Pursuant to 310 C.M.R. § 30.340(1), a generator who is not a Small Quantity Generator pursuant to 310 C.M.R. § 30.351 or a Very Small Quantity Generator pursuant to 310 C.M.R. § 30.353 is a Large Quantity Generator.

55. Pursuant to 310 C.M.R. § 30.340(2), a Large Quantity Generator must comply with the requirements set forth or referred to in 310 C.M.R. §§ 30.340 through 30.343, and with all other applicable requirements of 310 C.M.R. § 30.000, including the land disposal restrictions set forth in 310 C.M.R. § 30.750.

56. Pursuant to 310 C.M.R. § 30.340(3), a Large Quantity Generator may manage its universal wastes in compliance with 310 C.M.R. § 30.1000.

57. Pursuant to 310 C.M.R. § 30.340(4), a Large Quantity Generator may accumulate hazardous waste at the site of generation for 90 days or less without a storage license and without obtaining interim status provided that (a) the waste is accumulated in compliance with the general accumulation standards of 310 C.M.R. § 30.341; and (b) the waste is accumulated in containers managed in compliance with 310 C.M.R. § 30.342 or in tanks managed in compliance with 310 C.M.R. § 30.343.

58. At all times relevant to the violations alleged in this Complaint, Respondent has been and is a "Large Quantity Generator" of hazardous waste, within the meaning of 310 C.M.R.

§ 30.340(1), based on the amount of hazardous waste generated and accumulated on site during the period of the RCRA violations alleged herein.

59. At all times relevant to this Complaint, Respondent has been and is a "small quantity handler of universal waste" within the meaning of 310 C.M.R. § 30.1010.

60. During the April 2011 Inspection, EPA inspectors observed that Respondent uses a variety of chemicals and generates wastes at the Facility that are "hazardous wastes," as defined under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. §§ 260.10 and 261.3, and 310 C.M.R. §§ 30.010 and 30.102(2), including but not limited to customer retain samples designated for disposal and ultimately disposed of as hazardous waste, ignitable wastes (D001), corrosive wastes (D002), and other listed hazardous wastes (monochlorobenzene, U037).

61. Respondent has not obtained a permit under the provisions of 310 C.M.R. §§ 30.800 *et seq.*, and, for non-EPA authorized requirements, 40 C.F.R. Part 270, nor does it have interim status, to operate as a treatment, storage, or disposal facility.

62. Pursuant to 310 C.M.R. § 30.302, any person who generates a waste shall determine if that waste is a hazardous waste by using the following process: (1) first, determine whether the waste is excluded from 310 C.M.R. § 30.104; (2) next, determine if the waste is listed as a hazardous waste in 310 C.M.R.§§ 30.130 through 30.136; (3) for purposes of compliance with the land disposal restrictions set forth in 310 C.M.R.§ 30.750 or if the waste is not listed as a hazardous waste in 310 C.M.R. §§ 30.130 through 30.136, determine if the waste is hazardous waste pursuant to 310 C.M.R. §§ 30.120 through 30.125 by either testing the waste according to methods set forth in 310 C.M.R. §§ 30.151 through 30.157 or an equivalent method, or applying knowledge of the hazardous characteristics of the waste in light of the materials or the process used; and (4) except as provided by 310 § C.M.R. 30.302(5), if a generator

determines that a waste exhibits one or more characteristics, the generator must further determine whether there are any underlying hazardous constituents of the waste that are specified in 40 C.F.R. § 268.48, Table UTS, as incorporated by reference at 310 C.M.R. § 30.750. *See also* 40 C.F.R. §§ 262.11, 268.7(a).

63. Respondent violated 310 C.M.R. § 30.302 by failing to conduct adequate hazardous waste determinations with respect to waste generated at the Facility, including, but not limited to, the following waste streams later determined to be ignitable hazardous waste (D001) observed at the Facility during the April 2011 Inspection:

a. On the second floor of the main plant east of the center aisle, tightly packed in between stockpiled cardboard and miscellaneous equipment, several containers, including 55-gallon drums and 5-gallon containers, labeled "obsolete," including materials subsequently identified by Respondent as "Trans Oxide Yellow Alkyd," "Trans Oxide Red," "824-2003-G-P-D Raw Umber," and "824-1066 G-P-D Light Red Oxide," "waste petroleum distillates, paint related material," "824-9976 G-P-D Carbon Black," and "824-1804 G-P-D Yellow Oxide LT;"

b. On the second floor of the main plant east of the center aisle, tightly packed in between stockpiled cardboard and miscellaneous equipment, a 55-gallon drum labeled "Obsolete, SPN 00405, 11-6-08;"

c. On the second floor of the main plant to the side of the center aisle, tightly packed among other 55-gallon drums, a 55-gallon drum labeled "Obsolete, SPN 01920, 11-5-08" and "Tixogel ® OMS, SPN 01920, lot 10/24/08;"

d. On the second floor of the main plant to the side of the center aisle, tightly packed among 55-gallon drums, a 55-gallon drum labeled "Obsolete, SPN 00405, 11-5-08" and

"142 Solvent 66/3," and a smaller container on top of the drum labeled "Ektapro EEP solvent, combustible liquid and vapor, warning forms peroxides, SPN 00514;"

e. On the second floor of the main plant located away from the center aisle and toward the back wall, packed among several other 55-gallon drums, a 55-gallon drum labeled "Obsolete" and "Dow Corning 244 Fluid;"

f. On the fourth floor of the warehouse to the side of the center aisle, a box containing multiple old, dust-covered aerosol spray cans labeled "extremely flammable" and "Chain Lube;"

g. On the fourth floor of the warehouse to the side of the center aisle, several pallets containing at least five hundred aerosol spray cans labeled "IGI Klipper Wiz" and "Obsolete" (some of which were severely corroded);

h. In Building No. 3, several old, rusted, and corroded 55-gallon drums and 5-gallon buckets, that were subsequently identified by Respondent as "waste solvents;"

i. In Building No. 3, several rows of approximately forty (40) 5-gallon containers (some unlabeled, at least one labeled "Quarantine Quarantine," and at least one container leaking black liquid labeled "flammable liquid") stacked on each other and packed closely together, which were subsequently identified by Respondent as containing "waste flammable liquid, toxic;"

j. In Building No. 3, a wooden pallet containing at least thirty-five (35) metal, plastic, or cardboard small dust-covered containers, some of which were corroded and rusty, including a damaged and stained cardboard box and materials labeled "Loctite 7380" and "Lock-n-Pop," subsequently identified by Respondent as "waste flammable liquid, toxic" and "ignitable waste resin solution;" and

k. On the second floor of the main plant outside of the "Retain Room," several wooden pallets containing at least one hundred (100) tightly packed metal and plastic buckets and other small containers, several of which were very rusty and corroded, including a 1-gallon container of petroleum distillates, a 1-quart bottle labeled "Adhesion Promoter" containing toluene, xylene, acetone, alcohol, and petroleum distillates, a 1-quart bulging container labeled "Technical Chesterton Products, Cold Galvanizing Compound, flammable," and a container labeled "RBP Roofing System Seam Adhesive SA-1, Caution: Flammable, May cause Flash Fires."

64. Respondent violated 310 C.M.R. § 30.302 by failing to conduct adequate hazardous waste determinations with respect to waste generated at the Facility, including, but not limited to, the following hazardous waste streams comprised of old, small representative samples of customer products ("retain samples") observed at the Facility during the April 2011 Inspection:

a. On the second floor of the main plant east of the center aisle, placed on a wooden pallet in between drums and containers of materials labeled "obsolete" and "quarantine" and other equipment, approximately two hundred (200) retain samples sorted in cardboard box lids, marked with a cardboard placard labeled "oil/water based samples, sorted, to be wasted," several of which were dated with the year 2003, which were ultimately disposed of as hazardous waste;

b. On the second floor of the main plant located outside of the Retain Room, placed on a wooden pallet, approximately five hundred (500) retain samples sorted in cardboard box lids, marked with a cardboard placard labeled "Samples to be sorted and wasted," many of

which were dated with the years 2002 through 2008, which were ultimately disposed of as hazardous waste;

c. On the second floor of the main plant located outside of the Retain Room, placed on several wooden pallets, approximately one thousand (1,000) small retain samples sorted in approximately thirty (30) cardboard box lids marked with a cardboard placard labeled "samples to be sorted or used," and approximately forty (40) larger retain samples sorted in approximately twenty (20) cardboard boxes marked with a cardboard placard labeled "Loctite to be sorted and wasted," including materials subsequently identified by Respondent as "Loctite 7380," which were ultimately disposed of as hazardous waste;

d. On the first floor of the main plant located along the exterior wall of the flammable storage room near the HWSA, approximately thirty-two (32) 100-milliliter retain samples in a cardboard box lid, which were ultimately disposed of as hazardous waste.

65. Respondent violated 310 C.M.R. § 30.302 by failing to conduct adequate hazardous waste determinations with respect to waste generated at the Facility, including, but not limited to, the following waste streams later determined to be corrosive hazardous waste (D002) observed at the Facility during the April 2011 Inspection:

a. On the fourth floor of the warehouse to the side of the center aisle, approximately thirty (30) cardboard boxes stored in a haphazard fashion containing various sizes of metal, plastic, and aerosol can containers, labeled "Obsolete," including material subsequently identified by Respondent as "Pipeline Finished Product/Pipeline 23 Lancer General Purpose Cleaner Concentrate;"

b. In Building No. 3, an unlabeled, black 55-gallon drum showing evidence of pin holes caused by excessive corrosion from its contents;

c. In Building No. 3, an unlabeled, corroded, leaking, black 55-gallon drum;

d. In Building No. 3, an old fiber drum labeled "Ammo 4, 400 lbs, Ammonyx from Onyx Chem. Co.," subsequently identified by Respondent as "Ammonyx Lo;"

e. On the second floor of the main plant outside of the "Retain Room," a wooden pallet containing several tightly packed metal and plastic buckets and other small containers, several of which were very rusty and corroded, including two (2) 1-gallon containers labeled "DeLine Concentrate" which listed phosphoric acid as one of the ingredients;

f. In Building No. 3, a damaged, leaking, corroded cardboard box labeled "Ruger Chemical Co., Inc., Poison-Potassium hydroxide N.F. Pellets, Causes severe burns to skin and eyes;"

g. In Building No. 3, three (3) damaged, corroded, leaking cardboard boxes (first box labeled "Caustic waste, 26 lbs, lot 4/28/08, CR053, 31 lbs, 10/31/02" and "obsolete;" second box labeled "[illegible] amine, 1G 22, G-2328, Lot-2-4711, 26#, 12-5, JC;" and third box labeled "obsolete"), and a corroded 1-gallon container labeled "obsolete, wood stripper with green dye, 10-9-08."

66. Respondent violated 310 C.M.R. § 30.302 by failing to conduct adequate hazardous waste determinations with respect to waste generated at the Facility, including, but not limited to, the following waste streams later determined to be listed hazardous waste (U037) observed at the Facility during the April 2011 Inspection:

a. Located on the second floor of the main plant, a 55-gallon drum labeled and subsequently identified by Respondent as "monocholorobenzene" (U037).

67. Respondent's failure to conduct a hazardous waste determination for each material listed above constitutes at least four (4) violations of 310 C.M.R. § 30.302. *See also* 40 C.F.R. §§ 262.11, 268.7(a).

Count 2: Failure to Keep Hazardous Waste and Universal Waste Containers Closed

68. The allegations in paragraphs 1 through 67 are hereby realleged and incorporated herein by reference.

69. Pursuant to 310 C.M.R. § 30.342(1)(c), throughout the period of accumulation, a large quantity generator must comply with the standards for the use and management of containers including but not limited to those set forth in 310 C.M.R. § 30.685.

70. Pursuant to 310 C.M.R. § 30.685(1), a container holding hazardous waste shall always be closed during storage, except when waste is being added or removed. *See also* 40 C.F.R. §§ 262.34(a)(1), 265.173(a).

71. At the time of the April 2011 Inspection, Respondent was storing twenty-three (23) 55-gallon drums labeled "hazardous waste, ignitable, alcohols, ketones, petroleum distillates" within the Facility's hazardous waste storage area ("HWSA"). The bung for each drum was unscrewed, removed, and was observed resting on the rim of the bunghole, and thus each of the twenty-three drums of hazardous waste in the HWSA was open.

72. Respondent was also storing one 55-gallon drum and one 5-gallon bucket immediately outside the HWSA on a secondary containment pallet. The 55-gallon drum was nearly full and was labeled "hazardous waste, ignitable, alcohols, ketones, petroleum distillates." The bung for the 55-gallon drum was removed, a large plastic funnel was placed inside the bunghole, and, accordingly, the drum was open. The 5-gallon bucket was approximately half full, unlabelled, its lid was placed loosely askew on the bucket rim, and, accordingly, was open.

Respondent's representative stated that the 55-gallon drum and the 5-gallon bucket were containers that contained accumulated hazardous waste.

73. Pursuant to 310 C.M.R. § 30.1034(5)(a), a small quantity handler of universal waste must hold any broken mercury-containing lamps in a closed, vapor tight, structurally sound container that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. *See also* 40 C.F.R. § 273.13(d)(1).

74. At the time of the April 2011 Inspection, Respondent was storing two (2) broken mercury-containing fluorescent lamps, each resting on the lid of a 55-gallon drum of material inside the building on the property referred to as "Building No. 3." The broken mercury-containing lamps were not held in a container.

75. Respondent's failure to close twenty-three (23) containers of hazardous waste located inside the HWSA and two containers of hazardous waste located immediately outside the HWSA, and Respondent's failure to hold two broken mercury-containing lamps inside a closed container constitute violations of 310 C.M.R. §§ 30.685(1) and 30.1034(5)(a), respectively.

Count 3: Failure to Properly Label Containers of Hazardous Waste and Universal Waste

76. The allegations in paragraphs 1 through 75 are hereby realleged and incorporated herein by reference.

77. Pursuant to 310 C.M.R. § 30.341(2), each tank or container in which hazardous waste is being accumulated must be clearly marked and labeled throughout the period of accumulation with the words "hazardous waste," the hazardous waste(s) identified in words, and the type of hazard(s) associated with the waste(s) indicated in words. *See also* 40 C.F.R. § 262.34(a)(3).

78. During the April 2011 Inspection, representatives of Respondent explained that all water-based and volatile organic compound-based wastes are brought to the HWSA by

laboratory personnel at the end of each operational day. Jonathan Caragiano, a laboratory technician employed at the Facility, stated that he regularly transports laboratory waste to the 55-gallon drum located immediately outside the HWSA at the end of each day. Mr. Caragiano stated that he frequently uses methylene chloride in the laboratory, and EPA inspectors observed him with a small glass vessel labeled "methylene chloride" during the April 2011 Inspection.

79. At the time of the April 2011 Inspection, Respondent was storing twenty-three (23) 55-gallon drums inside the HWSA and one (1) 55-gallon drum immediately outside the HWSA, each labeled "hazardous waste, ignitable, alcohols, ketones, petroleum distillates." Each of these containers were characterized as "solvent blend clean-out" and described under waste profile number CH47320-003, which identifies methylene chloride as a hazardous constituent. None of the twenty-three (23) drums inside the HWSA nor the 55-gallon drum located immediately outside the HWSA included the words "methylene chloride" on their labels to describe the hazardous waste(s) contained therein.

80. Respondent was also storing a 5-gallon bucket that Respondent identified as containing hazardous waste immediately outside the HWSA. The 5-gallon bucket was completely unlabelled.

81. Pursuant to 310 C.M.R. § 30.1034(5)(e), a small quantity handler of universal waste must label or clearly mark each mercury-containing lamp, or a container in which the mercury-containing lamps are contained, with any one of the following phrases: "Universal Waste—Mercury-containing Lamp(s)," or "Waste Mercury-containing Lamp(s)," or "Used Mercury-containing Lamp(s)." *See also* 40 C.F.R. § 273.14(e).

82. During the April 2011 Inspection, Respondent was storing the following universal wastes in an area in the basement of the Facility's warehouse identified by Respondent's representatives as the "Universal Waste Storage Area:"

a. Approximately nine full (9) boxes of waste fluorescent mercury-containing lamps (each containing approximately thirty-six (36) four-foot mercury-containing lamps);

b. One full (1) box of thinner four-foot waste fluorescent mercury-containing lamps;

c. Approximately fourteen full (14) boxes of waste fluorescent mercury-containing lamps (each containing approximately fifteen (15) eight-foot mercury-containing lamps); and

d. One (1) two-foot waste fluorescent mercury-containing lamp in a separate box.

83. Respondent was also storing two (2) broken mercury-containing fluorescent lamps, each on the lid of two (2) separate 55-gallon drums of material inside the building on the property referred to as "Building No. 3."

84. None of the universal wastes identified in paragraphs 82 and 83 were labeled with any one of the following phrases: "Universal Waste—Mercury-containing Lamp(s)," or "Waste Mercury-containing Lamp(s)," or "Used Mercury-containing Lamp(s)."

85. Respondent's failure to properly label the hazardous wastes identified in paragraphs 79 and 80 and the universal wastes identified in paragraphs 82 and 83 constitute violations of 310 C.M.R. §§ 30.341(2) and 30.1034(5)(e), respectively.

Count 4: Failure to Date Containers of Hazardous Waste and Universal Waste

86. The allegations in paragraphs 1 through 85 are hereby realleged and incorporated herein by reference.

87. Pursuant to 310 C.M.R. § 30.341(2)(d), each tank or container in which hazardous waste is being accumulated must be clearly marked and labeled throughout the period of accumulation with the date upon which the period of accumulation began. *See also* 40 C.F.R. § 262.34(a)(2).

88. At the time of the April 2011 Inspection, none of the containers containing hazardous wastes identified in paragraphs 79 and 80 were labeled or marked with the date upon which the period of accumulation began.

89. Pursuant to 310 C.M.R. § 30.1034(5)(f), a small quantity handler of universal waste shall accumulate universal waste mercury-containing lamps in compliance with 310 C.M.R. § 30.1034(6). Pursuant to 310 C.M.R. § 30.1034(6)(a), a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler. Pursuant to 310 C.M.R. § 30.1034(6)(c), a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received by (1) placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received; (2) marking or labeling each individual item of universal waste (*e.g.*, each mercury-containing lamp), which is not in a container marked with the earliest date that any universal waste therein became a waste or was received, with the date that item became a waste or was received; (3) maintaining an inventory system on-site that identifies the earliest date that each universal waste became a waste or was received;