

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In re:

**EASTMAN KODAK COMPANY,
Respondent**

In a proceeding under
Section 113(d) of the Clean Air Act

**COMPLAINT
and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING**

CAA-02-2011-1209

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 APR -5 A 10: 57
REGIONAL HEARING
CLERK

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) under the authority of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., Section 113(d), 42 U.S.C. § 7413(d), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2. The Complainant is delegated, on behalf of Region 2, the authority to issue CAA Section 113(d) administrative Complaints for violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

CAA-02-2011-1209

Section 113(d) of the Act authorizes EPA to bring an administrative penalty action in a matter involving a violation that occurred more than twelve months prior to the initiation of an action, and to seek an administrative penalty that exceeds the amount provided by Statute, where the Administrator and the Attorney General jointly determine that such an action is appropriate.

On November 5, 2010, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the penalty amount and time limitation provided in Section 113(d) of the Act.

In this Complaint, EPA alleges that between 2008 and 2010 Respondent failed to comply with leak detection and repair (LDAR) requirements that apply to its Rochester, New York, Eastman Business Park. Eastman Business Park (Facility) is an integrated manufacturing plant that produces imaging products and synthetic organic chemicals. It is subject to the (LDAR) requirements set forth in 40 C.F.R. Part 63, Subpart FFFF, (§§ 63.2430 – 63.2550) (MON MACT), and 40 C.F.R. Part 63, Subpart UU, (§§ 63.1019 – 63.1039) (MON LDAR) and the Facility's CAA Title V Operating Permit. Based on Respondent's violations of those requirements, and pursuant to Sections 113(d) and (e) of the Act, the Clean Air Act Stationary Source Civil Penalty Policy and the Debt Collection Improvement Act of 1996 (DCIA), EPA proposes a civil administrative penalty of **\$367,685**.

STATUTORY, REGULATORY, and PERMITTING BACKGROUND

CAA Enforcement, Information Gathering and General Authority

1. Section 113(a)(3) of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act, including regulations promulgated under Sections 112 and 114, and permits issued pursuant to a State title V program adopted and approved pursuant to title V of the Act.

2. Section 113(d)(1)(A) and (B) of the Act, authorizes EPA to issue an administrative order against any person whenever, on the basis of any available information, the Administrator finds that such person has or is violating any requirements or prohibitions of title I, III, IV-A, V, or VI of the Act including but not limited to a requirement or prohibition of any rule, order, waiver, permit or plan promulgated, issued or approved under the Act.

3. Section 114(a)(1) of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

4. Section 302(e) of the Act defines the term "person" as an individual, corporation, partnership, association, state municipality, political subdivision of a state, and an agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

CAA Section 112 Statutory and Regulatory Authority

5. Section 112 of the Act requires the Administrator to publish a list of hazardous air pollutants (HAPs), a list of categories and subcategories of major and area sources of listed HAPs, and to promulgate regulations establishing emission standards, referred to as National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for each category or subcategory of major and area sources of HAP.

6. Section 112(a)(1) of the Act defines a "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit ten (10) tons per year (tpy) or more of any HAP or twenty-five (25) tpy or more of any combination of HAPs.

7. Section 112(b)(1) of the Act lists the applicable HAPs.

8. Section 112(c) of the Act requires the Administrator to publish a list of categories or subcategories of major and area sources of listed HAPs.

9. Section 112(d) of the Act requires the Administrator to promulgate regulations establishing NESHAPs for each category or subcategory of major and area sources of HAPs. Standards promulgated pursuant to Section 112 of the CAA are known as NESHAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. Section 112(d) of the CAA directs EPA to promulgate emissions standards based on the maximum achievable control technology

(MACT), but also allows EPA to elect to promulgate, in lieu of MACT standards, emission standards for "area" sources, as that term is defined in Section 112(a) of the Act, that are based on generally available control technology (GACT).

10. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

Part 63 General Standards

11. On March 16, 1994, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart A, §§ 63.1 – 63.16 (Part 63 Standards).

12. The Part 63 General Standards set forth definitions and general requirements applicable to all sources subject to any NESHAP promulgated under Section 112 of the CAA, as amended in 1990.

13. Pursuant to 40 C.F.R. § 63.1(a)(4), each relevant standard in 40 C.F.R. Part 63 must identify explicitly whether each provision in the Part 63 General Standards is or is not included in such relevant standard.

14. Pursuant to 40 C.F.R. § 63.1(b), the provisions of 40 C.F.R. Part 63 apply to the owner or operator of any stationary source that (i) emits or has the potential to emit any HAP listed in or pursuant to Section 112(b) of the Act, and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to Part 63.

15. Pursuant to 40 C.F.R. § 63.1(c), if a relevant standard has been established under Part 63, the owner or operator of an affected source must comply with the provisions of that standard and of the Part 63 General Standards, as provided in 40 C.F.R. § 63.1(a)(4).

16. 40 C.F.R. § 63.2 defines “affected source,” for the purposes of Part 63, means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act. This definition of “affected source” applies to each Section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.

17. 40 C.F.R. § 63.2 defines “existing source” as any affected source that is not a new source.

18. 40 C.F.R. § 63.2 defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

19. 40 C.F.R. § 63.2 defines “stationary source” as any building, structure, facility, or installation that emits or may emit any air pollutant.

20. Pursuant to 40 C.F.R. § 63.6(c)(1), after the effective date of a relevant standard established under 40 C.F.R. Part 63, the owner/operator of an existing source must comply with such standard by the compliance date established by the Administrator in the applicable Subpart(s) of 40 C.F.R. Part 63.

21. Pursuant to 40 C.F.R. § 63.9(h), the notification of compliance status (NOCS) requirements apply when an affected source becomes subject to a relevant standard.

22. Pursuant to 40 C.F.R. § 63.10(b)(1), the owner or operator of an affected source subject to the provisions of Part 63 must maintain files of all information (including all reports and notifications) required by Part 63 recorded in a form suitable and readily available for expeditious inspection and review. In addition, in accordance with § 63.10(b)(1), the files must be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record; and at a minimum, the most recent 2 years of data must be retained on site and the remaining 3 years of data may be maintained off site.

MON MACT

23. On November 10, 2003, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart FFFF, §§ 63.2430 – 63.2550, the NESHAP for miscellaneous organic chemical manufacturing (MON MACT).

24. Pursuant to 40 C.F.R. § 63.2435(a), the MON MACT provides requirements for owners and operators of miscellaneous organic chemical manufacturing process units (MCPUs) located at, or that are part of, a major source of HAP emissions as defined in Section 112(a) of the Act. The MON MACT requirements include, among others, requirements concerning emissions, leak repairs, recordkeeping and reporting.

25. Pursuant to 40 C.F.R. § 63.2435(b), an MCPU includes equipment necessary to operate a miscellaneous organic chemical manufacturing process, as defined in § 63.2550, that satisfies all of the conditions specified in § 63.2435(b)(1) through (3). An MCPU also includes any assigned storage tanks and transfer racks; equipment in open systems that is used to convey or store water having the same concentration and flow characteristics as wastewater; and components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are used to manufacture any material or family of materials described in § 63.2435(b)(1)(i) through (v) as follows:

26. Pursuant to 40 C.F.R. § 63.2435(b)(1), the MCPU produces any material or family of materials that is described in § 63.2435(b)(1)(i) through (v):

§ 63.2435(b)(1)(i): an organic chemical(s) classified using the 1987 version of SIC code 282, 283, 284, 285, 286, 287, 289, or 386, except as provided in § 63.2435(c)(5);

§ 63.2435(b)(1)(ii): an organic chemical(s) classified using the 1997 version of NAICS code 325, except as provided in § 63.2435(c)(5);

§ 63.2435(b)(1)(iii): quaternary ammonium compounds and ammonium sulfate produced with caprolactam;

§ 63.2435(b)(1)(iv): hydrazine; and/or

§ 63.2435(b)(1)(v): organic solvents classified in any of the SIC or NAICS codes listed in § 63.2435(b)(1)(i) or (ii) that are recovered using nondedicated solvent recovery operations.

27. Pursuant to 40 C.F.R. § 63.2435(b)(2), an MCPU processes, uses, or generates any of the organic HAP listed in Section 112(b) of the Act or hydrogen halide and halogen HAP, as defined in § 63.2550.

28. Pursuant to 40 C.F.R. § 63.2435(b)(3), an MCPU is not an affected source or part of an affected source under another Subpart, except for those process vents from batch operations within a chemical manufacturing process unit (CMPU), as identified in § 63.100(j)(4).

29. Pursuant to 40 C.F.R. § 63.2445(b), if a facility is an existing source on November 10, 2003, then the facility must comply with the MON MACT requirements for existing sources no later than May 10, 2008.

30. Pursuant to 40 C.F.R. § 63.2450(m)(1), when §§ 63.2455 through 63.2490 reference other Subparts in Part 63 that use the term "periodic report," it means "compliance report" for purposes of the MON MACT. In accordance with § 63.2450(m)(1), the compliance report must include the information specified in § 63.2520(e), as well as the information specified in the referenced Subparts, which in this case is 40 C.F.R. Part 63, Subpart UU (see § 63.1038(b)).

31. Pursuant to 40 C.F.R. § 63.2480(a), you must meet each requirement in Table 6 of the MON MACT that applies to equipment leaks, except as specified in paragraphs (b) through (d) of § 63.2480.

32. Pursuant to 40 C.F.R. § 63.2520(a), the owner or operator must submit each report in Table 11 of the MON MACT that applies.

33. Pursuant to 40 C.F.R. § 63.2520(b), (e) and as specified in Table 11 of the MON MACT, the owner or operator must submit semi-annual

compliance reports identifying any failure to comply with the MON MACT requirements. Pursuant to 40 C.F.R. §§ 63.2520 and 63.2550, such failures to comply are known as “deviations.”

34. Pursuant to 40 C.F.R. § 63.2520(d) and as specified in Table 11 of the MON MACT, a notification of compliance status report must be submitted no later than 150 days after the compliance date, as specified in § 63.2445, and include the information described in § 63.2520(d)(2)(i) through (ix).

35. Pursuant to 40 C.F.R. § 63.2520(e), the compliance report must contain the information specified in paragraphs § 63.2520(e)(1) through (10).

36. Pursuant to 40 C.F.R. § 63.2520(e)(5), the compliance report must contain the information on deviations, as defined in § 63.2550, according to paragraphs (e)(5)(i) and (ii) of § 63.2520.

37. Pursuant to 40 C.F.R. § 63.2520(e)(9), the compliance report must include applicable records and information for periodic reports as specified in referenced Subparts, including 40 C.F.R. Part 63, Subpart UU.

38. Pursuant to 40 C.F.R. § 63.2525, the owner or operator must keep the records specified in paragraphs (a) through (k) of § 63.2525.

39. Pursuant to 40 C.F.R. § 63.2525(a), the owner or operator must keep each applicable record required by the Part 63 General Standards and in, among other Parts 63 and 65 Subparts, referenced Subpart UU.

40. Pursuant to 40 C.F.R. § 63.2550(c), for an affected source complying with the requirements in 40 C.F.R. Part 63, Subpart UU, the terms

used in the MON MACT and have the meaning given them in § 63.1020 of Subpart UU.

41. Pursuant to 40 C.F.R. § 63.2550(i), deviation means any instance in which an affected source subject to the MON MACT, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by the MON MACT including, but not limited to, any emission limit, operating limit, or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in the MON MACT and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in the MON MACT during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by the MON MACT.

42. Pursuant to 40 C.F.R. § 63.2550(i), hydrogen halide and halogen HAP means hydrogen chloride, hydrogen fluoride, and chlorine.

43. Pursuant to 40 C.F.R. § 63.2550(i), miscellaneous organic chemical manufacturing process means all equipment that collectively function to produce a product or isolated intermediate that are materials that are described in § 63.2435(b).

44. Table 6 of the MON MACT indicates that as required in § 63.2480, an owner or operator must meet each requirement in Table 6 of the MON MACT that applies to the owner or operators equipment leaks.

45. Table 6, 1.a, of the MON MACT provides the requirements of specific Subparts that the owner or operator must comply with, including 40 C.F.R. Part 63, Subpart UU, for equipment leaks of all equipment that is in organic HAP service as stated in § 63.2480. For owners and operators complying with Subpart UU, Table 6, 1.a of the MON MACT also indicates that the owner or operator must comply with the requirements of Subpart UU and the requirements referenced therein, except as specified in § 63.2480(b) and (d).

46. Table 12 of the MON MACT lists the Part 63 General Standards provisions that apply, and includes §§ 63.6(c)(1), § 63.9(h), with the exceptions specified, and § 63.10(b)(1).

MON LDAR

47. On June 29, 1999, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart UU, §§ 63.1019 – 63.1039, National Emission Standards for Equipment Leaks – Control Level 2 Standards (MON LDAR).

48. Pursuant to 40 C.F.R. § 63.1019(a), owners and operators subject to the MON MACT (among other referencing Subparts) who choose the Subpart UU compliance option specified in § 63.2480 must comply with the MON LDAR, which applies to control air emissions from equipment leaks. The MON LDAR requirements include, among others, identification of MON LDAR components, leak repairs, recordkeeping and reporting.

49. Pursuant to 40 C.F.R. § 63.1020, equipment is defined as each pump, compressor, agitator, pressure relief device, sampling connection system,

open-ended valve or line, valve, connector, and instrumentation system in regulated material service; and any control devices or systems used to comply with Subpart UU.

50. Pursuant to 40 C.F.R. § 63.1020, first attempt at repair is defined as taking action for the purposes of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 63.1023(b) and (c) in order to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

51. Pursuant to 40 C.F.R. § 63.1020, equipment is repaired if it is adjusted, or otherwise altered, to eliminate a leak and monitored as specified in § 63.1023(b) and (c) to verify that emissions from the equipment are below the applicable leak definition.

52. Pursuant to 40 C.F.R. § 63.1020, in organic HAP service is defined as that piece of equipment which either contains or contracts a fluid (liquid or gas) that is at least 5% by weight of total organic HAP's as determined in accordance with the provisions of § 63.180(d) of 40 C.F.R. Part 63, Subpart H.

53. Pursuant to 40 C.F.R. § 63.1022(a), equipment subject to the MON LDAR must be identified. In accordance with § 63.1022(a), identification may include, among other things, physical tagging of the equipment, identification on a plant site plan, and in log entries, by designation of process unit or affected facility boundaries by some form of weatherproof identification, or by other appropriate methods.

54. Pursuant to 40 C.F.R. § 63.1023(a), the owner or operator of a regulated source subject to the MON LDAR program must monitor regulated equipment as specified in § 63.1023(a)(1) for instrument monitoring and § 63.1023(a)(2) for sensory monitoring.

55. Pursuant to 40 C.F.R. § 63.1023(a)(1)(i), valves in gas and vapor service and in light liquid service must be monitored in accordance with § 63.1025(b).

56. Pursuant to 40 C.F.R. § 63.1023(a)(1)(ii), pumps in light liquid service must be monitored in accordance with § 63.1026(b).

57. Pursuant to 40 C.F.R. § 63.1023(a)(2)(i), pumps in light liquid service must be observed in accordance with §§ 63.1026(b)(4) and (e)(1)(v).

58. Pursuant to 40 C.F.R. § 63.1023(b)(1), instrument monitoring must comply with Method 21 of 40 C.F.R. Part 60, Appendix A.

59. Pursuant to 40 C.F.R. § 63.1023(b)(3), the detection instrument must be calibrated before use on each day of its use by the procedure specified in Method 21 of 40 C.F.R. Part 60, Appendix A.

60. Pursuant to 40 C.F.R. § 63.1023(b)(4), calibration gases must be zero air (less than 10 ppm of hydrocarbon in air); and the gases specified in § 63.1023(b)(4)(i) except as provided in § 63.1023(b)(4)(ii).

61. Pursuant to 40 C.F.R. § 63.1023(c) the owner or operator may elect to adjust or not to adjust the instrument readings for background and must monitor as specified for the specific option chosen.

62. Pursuant to 40 C.F.R. § 63.1023(d), sensory monitoring consists of visual, audible, olfactory, or any other detection method used to determine a potential leak to the atmosphere.

63. Pursuant to 40 C.F.R. § 63.1023(e)(1), when each leak is detected pursuant to the monitoring specified in § 63.1023(a), a weatherproof and readily visible identification, must be attached to the leaking equipment.

64. Pursuant to 40 C.F.R. § 63.1023(e)(2), when each leak is detected, the information specified in § 63.1024(f) must be recorded and kept pursuant to the MON MACT.

65. Pursuant to 40 C.F.R. § 63.1024(a), the owner or operator must repair each leak detected as soon as practical, but no later than 15 calendar days after it is detected, except as provided in § 63.1024(d) and (e). In addition, 40 C.F.R. § 63.1024(a) requires that a first attempt at repair must be made no later than 5 calendar days after the leak is detected.

66. Pursuant to 40 C.F.R. § 63.1024(f), for each leak detected, the information specified in § 63.1024(f)(1) through (5) must be recorded and maintained pursuant to the MON MACT.

67. Pursuant to 40 C.F.R. § 63.1024(f)(1), the owner or operator must record and maintain the date of first attempt to repair the leak.

68. Pursuant to 40 C.F.R. § 63.1024(f)(2), the owner or operator must record and maintain the date of successful repair of the leak.

69. Pursuant to 40 C.F.R. § 63.1024(f)(3), the owner or operator must record and maintain the maximum instrument reading measured by Method 21 of

40 C.F.R. Part 60, Appendix A at the time the leak is successfully repaired or determined to be non-repairable.

70. Pursuant to 40 C.F.R. § 63.1025(a)(1), the owner or operator must comply with § 63.1025 no later than the compliance date specified in the referencing Subpart.

71. Pursuant to 40 C.F.R. § 63.1025(b)(1), valves must be monitored to detect leaks by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c).

72. Pursuant to 40 C.F.R. § 63.1025(b)(2), indicates that an instrument reading that defines a leak is 500 parts per million (ppm) or greater for valves.

73. Pursuant to 40 C.F.R. § 63.1025(b)(3), the owner or operator must monitor valves for leaks at the intervals specified in § 63.1025(b)(3)(i) through (v) and must keep the record as specified in § 63.1025(b)(3)(vi).

74. Pursuant to 40 C.F.R. § 1025(b)(3)(i), if at least the greater of 2 valves or 2% of the valves in a process unit leak, as calculated according to § 63.1025(c), the owner or operator must monitor each valve once per month.

75. Pursuant to 40 C.F.R. § 63.1025(b)(3)(vi), the owner or operator must keep a record of the monitoring schedule for each process unit.

76. Pursuant to 40 C.F.R. § 63.1025(d)(1), if a leak is determined pursuant to § 63.1025(b), (e)(1), or (e)(2), then the leak must be repaired using the procedures in § 63.1024, as applicable.

77. Pursuant to 40 C.F.R. § 63.1025(d)(2), after a leak has been repaired, the valve shall be monitored at least once within the first 3 months after its repair. In addition, 40 C.F.R. § 63.1025(d)(2) provides that the monitoring required is in addition to the monitoring required to satisfy the definition of repaired and first attempt at repair.

78. Pursuant to 40 C.F.R. § 63.1026(a), the owner or operator must comply with § 63.1026 no later than the compliance date specified in the MON MACT, which is the referencing Subpart.

79. Pursuant to 40 C.F.R. § 63.1026(b)(1), an owner or operator must monitor each pump monthly to detect leaks by the method specified in § 63.1023(b) and, as applicable, § 63.1023(c).

80. Pursuant to 40 C.F.R. § 63.1026(b)(2)(iii), the instrument reading that defines a leak as 1,000 ppm or greater for all pumps other than those handling polymerizing monomers and/or in food/medical service.

81. Pursuant to 40 C.F.R. § 63.1026(b)(3), for pumps to which a 1,000 ppm [or greater] leak definition applies, repair is not required unless an instrument reading of 2,000 ppm or greater is detected.

82. Pursuant to 40 C.F.R. § 63.1026(b)(4), each pump must be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal and the owner or operator must document that the inspection was conducted and the date of the inspection. In addition, § 63.1026(b)(4) specifies that if there are indications of liquids dripping from the

pump seal at the time of the weekly inspection, the owner or operator must follow the procedure specified in either § 63.1026(b)(4)(i) or (b)(4)(ii).

83. Pursuant to 40 C.F.R. § 63.1026(e)(1), each dual mechanical seal pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of § 63.1026(b), provided the requirements specified in paragraphs § 63.1026(e)(1)(i) through (e)(1)(viii) of § 63.1026 are met.

84. In order to be exempt from the requirements of § 63.1026(b), pursuant to 40 C.F.R. § 63.1026(e)(1)(i), the owner or operator must, among other things, determine, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both. In addition, pursuant to 40 C.F.R. § 63.1026(e)(1)(i), the owner or operator must keep records at the plant of the design criteria; and any changes to these criteria and the reasons for the changes and this record must be available for review by an inspector.

85. In order to be exempt from the requirements of § 63.1026(b), pursuant to 40 C.F.R. § 63.1026(e)(1)(v), the owner or operator must check each pump by visual inspection each calendar week for indications of liquids dripping from the pump seal and the owner or operator must document that the inspection was conducted and the date of the inspection.

86. Pursuant to 40 C.F.R. § 63.1038(a), an owner or operator of more than one regulated source subject to the MON LDAR, may comply with the

recordkeeping requirements for the regulated sources in one recordkeeping system. In addition, § 63.1038(a) requires the recordkeeping system to identify each record by regulated source and the type of program being implemented for each type of equipment.

87. As specified in 40 C.F.R. § 63.1022(a) and (b), and reiterated in 40 C.F.R. § 63.1038(b)(1), the owner or operator must keep general and specific equipment identification if the equipment is not physically tagged and the owner or operator is electing to identify the equipment subject to the MON LDAR through written documentation such as a log or other designation.

88. Pursuant to 40 C.F.R. § 63.1038(b), the owner or operator must report the information specified in paragraphs (b)(1) through (b)(8) of § 63.1038(b), as applicable, in the Periodic Report specified in the MON MACT, the referencing Subpart.

89. Pursuant to 40 C.F.R. § 63.1038(b)(6), the owner or operator must keep records for leaking equipment as specified in § 63.1023(e)(2).

90. Pursuant to 40 C.F.R. § 63.1038(b)(7), the owner or operator must keep records for leak repair as specified in § 63.1024(f) and records for delay of repair as specified in § 63.1024(d).

91. Pursuant to 40 C.F.R. § 63.1038(b)(8), the owner or operator must report the information listed in § 63.1038(a) for the Initial Compliance Status Report for process units or affected facilities with later compliance dates. Report any revisions to items reported in an earlier Initial Compliance Status Report if the method of compliance has changed since the last report.

92. Pursuant to 40 C.F.R. § 63.1038(c)(1), the owner or operator must maintain the records specified in § 63.1038(c)(1)(i) and (c)(1)(ii) for valves.

93. Pursuant to 40 C.F.R. § 63.1038(c)(1)(i), the owner or operator must maintain the monitoring schedule for each process unit as specified in § 63.1025(b)(3)(vi).

94. Pursuant to 40 C.F.R. § 63.1038(c)(2), the owner or operator must maintain the records for pumps as specified in § 63.1038(c)(2)(i) through (iii) as follows:

§ 63.1038(c)(2)(i): documentation of pump visual inspections as specified in § 63.1026(b)(4);

§ 63.1038(c)(2)(ii): documentation of dual-mechanical seal pump visual inspections as specified in § 63.1026(e)(1)(v); and

§ 63.1038(c)(2)(iii): for the criteria as to the presence and frequency of drips for dual mechanical seal pumps, records of the design criteria and explanations and any changes and the reason for the changes as specified in § 63.1026(e)(1)(i).

95. Pursuant to 40 C.F.R. § 63.1038(c)(4)(i), the owner or operator must maintain documentation of agitator seal visual inspections as specified in § 63.1028.

96. Pursuant to 40 C.F.R. § 63.1039(a), each owner or operator must submit an Initial Compliance Status Report according to the procedures in the referencing Subpart.

97. Pursuant to 40 C.F.R. § 63.1039(a)(1), the notification must include the following information for each process unit or affected facility subject to the MON LDAR requirements:

§ 63.1039(a)(1)(i): Process unit or affected facility identification;

§ 63.1039(a)(1)(ii): Number of each equipment type (e.g., valves, pumps) excluding equipment in vacuum service;

§ 63.1039(a)(1)(iii): Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals"); and

§ 63.1039(a)(1)(iv): Planned schedule for requirements in §§ 63.1025 and 63.1026.

98. Pursuant to 40 C.F.R. § 63.1039(b), the owner or operator must identify noncompliance with the MON LDAR requirements in the Periodic Reports required by § 63.2520 of the MON MACT.

CAA Title V Statutory, Regulatory and Permit Program Requirements

99. Section 501(2) of the Act provides that the term "major source" means any stationary source (or group of stationary sources located within a contiguous area and under common control) that is a major source as defined in Section 112 of the Act, and/or Section 302 of the Act or part D of subchapter I of the Act.

100. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under title V of the Act or to operate a title V affected source, including a major source or any other source (including an area source) subject to standards or regulations under, among other things, Section 112 of the Act, except in compliance with a permit issued by a permitting authority under title V of the Act.

101. Section 502(b) of the Act requires EPA to promulgate regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency and set forth the procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs.

102. 40 C.F.R. Part 70, promulgated pursuant to title V of the Act, among other things, sets forth corresponding minimum requirements for state operating permit programs.

103. 40 C.F.R. Part 71 sets forth the comprehensive federal air quality operating permit program consistent with the requirements of title V of the Act, and defines the requirements and the corresponding procedures by which EPA will issue title V operating permits.

104. Section 502(d)(1) of the Act requires each State to develop and submit to the Administrator a permit program meeting the requirements of title V of the Act.

105. In accordance with Section 502(d)(1) of the Act, New York developed and submitted 6 NYCRR Chapter III Part 201 (the New York Title V Operating Permit Program) to meet the requirements of title V of the Act and 40 C.F.R. Part 70, promulgated to Section 502(b) of the Act.

106. EPA granted interim approval of the New York Title V Operating Permit Program on December 9, 1996, 61 Fed. Reg. 57,589 (Nov. 7, 1996).

107. EPA granted full approval of the New York Title V Operating Permit Program on February 5, 2002. 67 Fed. Reg. 5,216 (Feb. 5, 2002).

108. Section 503(a) of the Act provides that any source specified in Section 502(a) of the Act shall become subject to a permit program and shall be required to have a permit to operate.

109. Section 503(b)(2) of the Act provides that the regulations promulgated pursuant to Section 502(b) of the Act shall include requirements that the permittee periodically (but no less frequently than annually) certify that its facility is in compliance with any applicable requirements of the Title V Operating Permit and that the permittee promptly report any deviations from the operating permit requirements to the permitting authority.

110. Section 504(a) of the Act and the New York Title V Operating Permit Program regulations have at all relevant times required that each permit issued pursuant to title V shall include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act and the requirements of the applicable implementation plan.

111. 6 NYCRR 201-6.5(c)(2), a provision in the NYS Title V Operating Permit Program, requires records of all monitoring data and support information be retained for a period of at least five years from the date of the monitoring, sampling, measurement, report, or application. The provision specifies that support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, all quality assurance information and copies of all reports required by the permit.

112. 6 NYCRR 201-6.5(e), a provision in the NYS Title V Operating Permit Program, requires that sources certify compliance annually and submit annual certifications to both the permitting agency, New York State Department of Environmental Conservation (NYSDEC), and EPA.

FINDINGS OF FACT

113. Paragraphs 1 – 112 are re-alleged and incorporated herein by reference.

Respondent's Background

114. Respondent is a limited liability corporation duly organized under the laws of New York.

115. Respondent owns and operates the Facility, which is a large, integrated manufacturing plant that produces imaging products and synthetic organic chemicals.

116. Respondent's Facility, Eastman Business Park, is located at 1669 Lake Avenue, Rochester, NY 14652.

117. Respondent's Facility's Standard Industrial Classification (SIC) is 3861 "Photograph Equipment and Supplies."

Facility's Title V Operating Permit

118. On February 20, 2003, NYSDEC issued the Facility a Title V Operating Permit, # 8-2614-00205/01801.

119. NYSDEC approved modifications to Respondent's Title V Operating Permit # 8-2614-00205/01801 on March 1, 2004; March 1, 2007; and June 11, 2009.

120. At all times relevant to this Complaint, Respondent's Facility is a major source as provided in its Title V Operating Permit, which states, "is over 10 tpy for each of many Hazardous Air Pollutants (HAPs) and over 25 tpy for total HAPs."

121. At all times relevant to this Complaint, Condition 2-19, Item 2-19.1 of Respondent's Title V Operating Permit has included the MON MACT as an applicable requirement.

122. At all times relevant to this Complaint, Condition 5, Item 5.1 of Respondent's Title V Operating Permit has included 6 NYCRR 201-6.5(c)(2) as an applicable requirement requiring Respondent to keep records of all monitoring data and support information and that these records be retained for a period of at least 5 years from the date of the monitoring, sampling, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the Facility's Title V Operating Permit.

123. At all times relevant to this Complaint, Condition 2-18 of Respondent's Title V Operating Permit has included 6 NYCRR 201-6.5(e) as an applicable requirement, requiring Respondent to submit annual certifications to NYSDEC and EPA.

Respondent's NOCS & MON MACT Compliance Reports

124. Respondent's initial NOCS report is dated October 7, 2008, which is within 150 days after May 10, 2008, the applicable compliance date as specified in § 63.2445(b), as required by § 63.2520(d)(1).

125. Kodak's semi-annual MON MACT compliance report for the second half of 2008 (2008 2nd Semi-annual Compliance Report) includes MON LDAR deviations.

126. Kodak's semi-annual MON MACT compliance report for the first half of 2009 (2009 1st Semi-annual Compliance Report) includes MON LDAR deviations.

127. Kodak's semi-annual MON MACT compliance report for the second half of 2009 (2009 2nd Semi-annual Compliance Report) includes MON LDAR deviations.

128. Kodak's semi-annual MON MACT compliance report for the first half of 2010 (2010 1st Semi-annual Compliance Report) includes MON LDAR deviations.

EPA Investigation

129. From June 15 - 18, 2009, EPA's National Enforcement Investigations Center (NEIC) conducted a focused CAA investigation (Inspection) at Kodak's Facility to determine compliance with the MON MACT and the MON LDAR.

130. On February 24, 2010, EPA issued a Section 114 Information Request Letter (Section 114 Letter) to obtain further information.

131. On March 31, 2010, Respondent submitted a response to the Section 114 Letter (Section 114 Response).

Section 114 Response on Applicability

132. In response to the Section 114 Letter, Section II, question 2, Respondent indicated that Kodak's Facility is a major source of HAPs as defined in Section 112(a) of the Act.

133. In response to the Section 114 Letter, Section II, question 1, Respondent indicated that the Facility includes the following MON MACT-affected sources:

- a. Synthetic Chemicals Division (SCD or SynChem) North Chemicals;
- b. Synthetic Chemicals Division (SCD or SynChem) West Chemicals;
- c. Synthetic Chemicals Division (SCD or SynChem) Small Scale Chemical;
- d. Distilling East (B-120);
- e. Distilling West (B-322);
- f. Inks and Varnishes (B-81); and
- g. OLED (B-82).

134. In response to the Section 114 Letter, Section II, question 2, Respondent indicated that the three Synthetic Chemicals operations produce materials described in the 1987 SIC code 3861 and the 1997 NAICS code 325992 for photographic chemical manufacturing.

135. In response to the Section 114 Letter, Section II, question 2, Respondent indicated that organic solvents from the three Synthetic Chemical operations are recovered using non-dedicated solvent recovery at Distilling West (B-322) and Distilling East (B-120).

136. In response to the Section 114 Letter, Section II, question 2, Respondent indicated that the Inks & Varnish and OLED operations produce

materials described in the 1987 SIC code 2869 and the 1997 NAICS code 325199 for all other basic organic chemical manufacturing.

137. In response to the Section 114 Letter, Section II, question 2, Respondent indicated that the three SCD operations, the B-322 and B-120 operations, the Inks & Varnish and OLED operations are not subject to another Subpart of 40 C.F.R. Part 63 other than the MON MACT.

138. In response to the Section 114 Letter, Section II, question 3, Respondent indicated that the SCD operations, the B-322 and B-120 operations, the Inks and Varnish and OLED operations were each MCPUs.

139. In response to the Section 114 Letter, Section II, question 3, Respondent provided tables indicating which MON LDAR provisions Kodak follows for each category of equipment at its SCDs, B-322 and B-120 MCPUs.

140. In response to the Section 114 Letter, Section II, question 3, Respondent provided tables indicating which MON LDAR provisions Kodak follows for each category of equipment at its SCDs, B-322 and B-120 MCPUs.

141. In response to the Section 114 Letter, Section II, question 5, for each component subject to the Facility's MON LDAR program, Respondent provided the following information: tag number; type of component; whether the component is in light liquid service or gas vapor service; location of component; whether the valve is "unsafe to monitor" or "difficult to monitor;" and the type of process in which the component is included.

142. In response to the Section 114 Letter, Section II, question 5, Respondent listed the number of pumps, valves and agitators at its SCDs, B-322 and B-120 MCPUs as follows:

- a. SCD: 100 pumps; 5,689 valves; and 94 agitators;
- b. B-322: 32 pumps; 1,388 valves; and 0 agitators; and
- c. B-120: 5 pumps; 174 valves; and 0 agitators.

143. In response to the Section 114 Letter, Section II, questions 6 and 7, Respondent indicated which Method 21 monitoring data for the SCDs, B-322 and B-120 operations is found in a LeakDAS® database.

Identification of MON LDAR Components

144. In response to the Section 114 Letter, Section II, question 4, Respondent indicated that it tags its components subject to the MON LDAR program.

145. In response to the Section 114 Letter, Section II, question 4, Respondent indicated that it “overlooked” components that should have been included in its Facility’s MON LDAR program.

146. In the following semi-annual MON MACT compliance reports, Respondent indicated the following “overlooked” components as deviations:

- a. 2008 2nd Semi-annual Compliance Report:
 - i. Seven B-322 valves (B-322 valves).
- b. 2009 2nd Semi-annual Compliance Report:
 - i. Three valves associated with a backup hazardous waste pump in the B-302 tank farm (B-302 valves);
 - ii. SynChem process pump (SynChem pump); and
 - iii. Five valves associated with a particular solvent line between Distilling B-322 and SynChem B-304 (Solvent Line valves).

- c. 2010 1st Semi-annual Compliance Report:
 - i. 2 valves on the roof of B-304 (B-304 valves);
 - ii. 3 valves at B-322 (B-322 valves);
 - iii. 1 valve in HAP service in the inlet piping to the B-325 recovery tank (B-325 valve); and
 - iv. On March 23, 2010 44 new components were put into HAP service after initial valve monitoring.

147. Respondent indicated that the overlooked components listed above were tagged on the following dates:

- a. 2008 2nd Semi-annual Compliance Report
 - i. B-322 valves – 6/8/08.
- b. 2009 2nd Semi-annual Compliance Report
 - i. B-302 valves - 7/9/09;
 - ii. SynChem pump - 8/26/09 (2 days after it was replaced); and
 - iii. Solvent Line valves - 2/19/10.
- c. 2010 1st Semi-annual Compliance Report
 - i. B-304 valves – 1/28/10;
 - ii. B-322 valves – 1/29/10;
 - iii. B-325 valve – 5/5/10; and
 - iv. 44 valves – 3/23/10.

Monitoring MON LDAR Valves

148. Respondent's semi-annual MON MACT compliance reports indicated that the overlooked components listed above in Count 1 were not monitored during the following time period:

- a. 2008 2nd Semi-annual Compliance Report
 - i. B-322 valves – 5/10/08 – 6/8/08.
- b. 2009 2nd Semi-annual Compliance Report
 - i. B-302 valves - 5/10/08 – 7/7/09;
 - ii. SynChem pump – 8/24/09 – 8/26/09;
 - iii. Solvent Line valves – 5/10/08 – 12/31/09.

- c. 2010 1st Semi-annual Compliance Report
 - i. B-304 valves – 5/10/08 – 1/28/10;
 - ii. B-322 valves – 5/10/08 – 1/29/10;
 - iii. B-325 valve – 5/10/08 – 5/5/10; and
 - iv. 44 valves – 5/10/08 – 3/23/10.

149. Respondent did not properly monitor the following valves using the toxic vapor analyzers (TVA) to detect leaks:

- a. 2008 2nd Semi-annual Compliance Report
 - i. B-322 valves.
- b. 2009 2nd Semi-annual Compliance Report
 - i. B-302 valves;
 - ii. Solvent Line valves.
- c. 2010 1st Semi-annual Compliance Report
 - i. B-304 valves;
 - ii. B-322 valves;
 - iii. B-325 valves; and
 - iv. 44 valves.

150. Respondent indicated in its 2010 1st Semi-annual Compliance Report that 44 of 133 new components were put into HAP service after initial valve monitoring.

Initial Repair Attempt – Valve #5141

151. In its response to the Section 114 Letter, Section II, questions 11-14 and its 2009 1st Semi-annual Compliance Report, Respondent indicated that it discovered valve #5141 leaking on 5/14/08.

152. In its response to the Section 114 Letter, Section II, questions 11-14 and its 2009 1st Semi-annual Compliance Report, Respondent indicated that it made a first attempt at repair to valve #5141 on 5/21/08, 7 days after the leak was discovered.

Monitoring MON LDAR Pumps

153. In its response to the Section 114 Letter, Section II, question 15, Respondent indicated that it incorrectly applied the batch pump leak definition and repair threshold of 10,000 ppm to 27 batch pumps in the SCD MCPU (SCD pumps).

154. In its response to the Section 114 Letter, Section II, question 15, Respondent indicated that the SCD pumps should have been subject to the 1,000 ppm [or greater] leak definition and 2,000 ppm [or greater] repair threshold.

155. In its response to the Section 114 Letter, Section II, questions 19-21, Respondent indicated that it became aware of the incorrect leak definition issues on 6/17/09.

Initial Attempt and Final Repairs for MON LDAR Pumps

156. EPA reviewed Respondent's LeakDAS® database file and found the following recorded leaks above 2,000 ppm for pumps located in B-322:

- a. Tag #76 – 6/7/08;
- b. Tag #76 - 2/4/09, 3/24/09, 4/21/09, 5/6/09, and 6/5/09;
- c. Tag #295 - 5/10/08 and 6/7/08;
- d. Tag #295 - 9/25/08 and 10/30/08;
- e. Tag #295 - 12/10/08;
- f. Tag #295 - 2/4/09 and 3/24/09;
- g. Tag #295 - 5/6/09 and 6/5/09;
- h. Tag #332 - 5/10/08 and 6/8/08;
- i. Tag #805 - 12/10/08;
- j. Tag #870 - 6/6/08;
- k. Tag #870 - 9/25/08;
- l. Tag #870 - 12/10/08 and 1/13/09;
- m. Tag #870 - 5/6/09;
- n. Tag #1243 - 6/7/08;
- o. Tag #1243 - 11/10/08; and
- p. Tag #1243 - 2/4/09.

157. In its response to the Section 114 Letter, Section II, question 15, Respondent provided a list of the months it failed to repair leaks as a result of its error in using the incorrect leak definition and repair threshold for the SCD pumps as follows:

- a. Tag # 76 – repairs not performed in February, March, April, May and June of 2009;
- b. Tag # 295 – repairs not performed in May, September, October and December of 2008 and February, March, May and June of 2009;
- c. Tag # 332 – repairs not performed in May and June of 2008;
- d. Tag # 805 – repairs not performed in December of 2008;
- e. Tag # 870 – repairs not performed in June, September and December of 2008 and January and May of 2009; and
- f. Tag # 1243 – repairs not performed in June and November of 2008 and February of 2009.

158. In its response to the Section 114 Letter, Section II, questions 19-21, Respondent indicated that it did not conduct first attempt repairs and final repairs for the following pumps:

- a. Tag # 76, leak date 6/7/08, leak reading 2,585 ppm;
- b. Tag #295, leak date 5/10/08, leak reading 7,254 ppm and leak date 6/7/08, leak reading 37,998 ppm;
- c. Tag #332, leak date 5/10/08, leak reading 9,230 ppm and leak date 6/8/08, leak reading 9,485 ppm;
- d. Tag # 870, leak date 6/6/08, leak reading 4,048 ppm; and
- e. Tag #1243, leak date 6/7/08, leak reading 8,224 ppm.

Visual Weekly Inspection for MON LDAR Pumps and/or Documentation of Visual Weekly Inspections

159. In its 2010 1st Semi-annual Compliance Report, Respondent indicated that on March 31, 2010 it discovered that there was no documentation of a weekly visual inspection for the B-325 pumps for week #20 of 2008.

160. In its 2010 1st Semi-annual Compliance Report, Respondent indicated that on March 31, 2010 it discovered that there was no documentation of a weekly visual inspection for the B-322 pumps for week #22 of 2008.

161. In its 2010 1st Semi-annual Compliance Report, Respondent indicated that on March 31, 2010 it discovered that there was no documentation of a weekly visual inspection for the B-322 pumps for week #27 of 2009.

162. In its 2009 2nd Semi-annual Compliance Report, Respondent indicated that it did not perform the weekly visual inspection for pumps and open-ended valves and lines during the week of 6/29/09 – 7/5/09.

Semi-annual MON LDAR Periodic Reports

163. Respondent did not report its failure to conduct an initial repair on valve #5141 within 5 days, as detailed in paragraphs 151 and 152 above, in its semi-annual MON periodic report for 2008.

164. Respondent did not report its failure to conduct and/or maintain documentation of 16 initial repairs on 6 pumps within 5 days, as detailed in paragraphs 156, 157 and 158 above, in its semi-annual MON periodic report for 2008 and 1st semi-annual MON periodic report for 2009.

165. Respondent did not report its failure to conduct and/or maintain documentation of 16 final repairs on 6 pumps within 15 days, as detailed in paragraphs 156, 157 and 158 above, in its semi-annual MON periodic report for 2008 and 1st semi-annual MON periodic report for 2009.

Title V Annual Certification

166. Respondent did not report its failure to conduct an initial repair on valve #5141 within 5 days, as detailed in paragraphs 151 and 152 above, in its 2008 title V compliance certification.

167. Respondent did not report its failure to conduct and/or maintain documentation of 16 initial repairs on 6 pumps within 5 days, as detailed in paragraphs 156, 157 and 158 above, in its 2008 and 2009 title V annual certifications.

168. Respondent did not report its failure to conduct and/or maintain documentation of 16 final repairs on 6 pumps within 15 days, as detailed in paragraphs 156, 157 and 158 above, in its 2008 and 2009 title V annual certifications.

169. Respondent did not report its failure to complete and/or maintain documentation of weekly visual pump inspections, as detailed in paragraphs 159 through 162 above, in its 2008 and 2009 title V annual certifications.

CONCLUSIONS OF LAW

170. From the Findings of Fact as set forth above, Respondent is a "person" with the meaning of Section 302(e) of the Act.

171. From the Findings of Fact set forth above, Respondent is the subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

172. From the Findings of Fact as set forth above, Respondent is a "major source" within the meaning of Section 112(a)(1) and as indicated in the Facility's Title V Operating Permit.

173. Respondent's Facility is subject to the conditions in its Title V Operating Permit.

174. From the Findings of Fact as set forth above, Respondent's Facility is subject to the MON MACT, promulgated pursuant to Sections 112 and 114 of the Act.

175. From the Findings of Fact as set forth above, Respondent's Facility is subject to the MON LDAR, promulgated pursuant to Sections 112 and 114 of the Act.

Count 1 - Failures to Timely Identify Components Subject to the MON LDAR Requirements and Submit a Complete NOCS Report

176. Paragraphs 1-175 are repeated and re-alleged as if set forth fully herein.

177. Each of Respondent's failures to timely identify 66 components subject to the MON LDAR requirements is a violation of 40 C.F.R. § 63.1022(a), which led to a failure to include these components in the Facility's submitted NOCS report, as specified in and required by 40 C.F.R. § 63.2520(a).

178. Each of Respondent's violations of 40 C.F.R. §§ 63.1022(a) and 63.2520(a) is a violation of 40 C.F.R. § 63.6(c)(1) and Sections 112 and 114 of the Act.

179. Each of Respondent's violations of Condition 2-19, Item 2-19.1 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 2 - Failures to monitor valves subject to MON LDAR using toxic vapor analyzers (TVA) to detect leaks

180. Paragraphs 1-179 are repeated and re-alleged as if set forth fully herein.

181. Each of Respondent's failures to monitor at least 66 valves subject to the MON LDAR using toxic vapor analyzers (TVA) to detect leaks, as specified in Method 21 – 2.1, is a violation of 40 C.F.R. § 63.1026(b)(1).

182. Each of Respondent's violations of 40 C.F.R. § 63.1026(b)(1) is a violation of 40 C.F.R. § 63.6(c)(1) and Sections 112 and 114 of the Act.

183. Each of Respondent's violations of Condition 2-19, Item 2-19.1 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 3 - Failure to conduct an initial repair attempt within 5 days

184. Paragraphs 1-183 are repeated and re-alleged as if set forth fully herein.

185. Respondent's failure to perform a first attempt at repair on valve #5141 within 5 days, as specified in 40 C.F.R. § 63.1025(d), is a violation of 40 C.F.R. § 63.1024(a).

186. Respondent's violation of 40 C.F.R. § 63.1024(a) is a violation of 40 C.F.R. § 63.6(c)(1) and Section 112 of the Act.

187. Respondent's violation of Condition 2-19, Item 2-19.1 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 4 - Failures to monitor pumps using Method 21

188. Paragraphs 1-187 are repeated and re-alleged as if set forth fully herein.

189. Each of Respondent's failures to monitor SCD pumps using calibration gases at a concentration approximately equal to the applicable leak definition for pumps, as specified in 7.12 of Method 21, is a violation of 40 C.F.R. § 63.1026(b)(2).

190. Each of Respondent's violations of 40 C.F.R. § 63.1026(b)(2) is a violation of 40 C.F.R. § 63.6(c)(1) and Sections 112 and 114 of the Act.

191. Each of Respondent's violations of Condition 2-19, Item 2-19.1 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 5 – Failures to conduct and/or maintain documentation of 16 initial repair attempts within 5-days

192. Paragraphs 1-191 are repeated and re-alleged as if set forth fully herein.

193. Each of Respondent's failures to perform and/or maintain documentation of 16 first attempts at repair of six SCD pumps within 5 days, as specified in 40 C.F.R. § 63.1026(d), is a violation of 40 C.F.R. § 63.1024(a) and/or 40 C.F.R. § 63.1038(b)(7).

194. Each of Respondent's violations of 40 C.F.R. § 63.1024(a) and/or 40 C.F.R. § 63.1038(b)(7) is a violation of 40 C.F.R. § 63.6(c)(1) and Section 112 of the Act.

195. Each of Respondent's violations of Condition 2-19, Item 2-19.1 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 6 – Failures to conduct and/or maintain documentation of 16 final repair attempts within 15-days

196. Paragraphs 1-195 are repeated and re-alleged as if set forth fully herein.

197. Each of Respondent's failures to conduct and/or maintain documentation of 16 final repairs on six SCD pumps within 15 days, as specified in 40 C.F.R. § 63.1026(d), is a violation of 40 C.F.R. § 63.1024(a) and/or 40 C.F.R. § 63.1038(b)(7).

198. Each of Respondent's violations of 40 C.F.R. § 63.1024(a) and/or 40 C.F.R. § 63.1038(b)(7) is a violation of 40 C.F.R. § 63.6(c)(1) and Section 112 of the Act.

199. Each of Respondent's violations of Condition 2-19, Item 2-19.1 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 7 – Failures to conduct and/or maintain documentation of visual inspections for pumps

200. Paragraphs 1-199 are repeated and re-alleged as if set forth fully herein.

201. Each of Respondent's failures to conduct and/or maintain documentation of weekly visual inspections for pumps during the weeks of 5/12/08, 5/26/08, 6/29/09, and 7/6/09 is a violation of 40 C.F.R. § 63.1026(b)(4) and/or 40 C.F.R. § 63.1038(c)(2)(i).

202. Each of Respondent's violations of 40 C.F.R. § 63.1026(b)(4) and/or 40 C.F.R. § 63.1038(c)(2)(i) is a violation of 40 C.F.R. § 63.6(c)(1) and Section 112 or Sections 112 and 114 of the Act.

203. Each of Respondent's violations of Condition 2-19, Item 2-19.1 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 8 – Failures to identify noncompliance with the MON LDAR in the MON LDAR periodic reports

204. Paragraphs 1-203 are repeated and re-alleged as if set forth fully herein.

205. Each of Respondent's failures to identify non-compliance with the MON LDAR in its 2008 and 2009 semi-annual MON periodic reports is a violation of 40 C.F.R. § 63.1039(b), as specified in 40 C.F.R. § 63.2520(a).

206. Each of Respondent's violations of 40 C.F.R. § 63.1039(b) is a violation of 40 C.F.R. § 63.6(c)(1) and Sections 112 and 114 of the Act.

207. Each of Respondent's violations of Condition 2-19, Item 2-19.1 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 9 – Failures to identify noncompliance in the title V Annual Compliance Certifications

208. Paragraphs 1-207 are repeated and re-alleged as if set forth fully herein.

209. Each of Respondent's failure to identify non-compliance and certify non-compliance with the MON LDAR in its title V annual compliance certifications for calendar years 2008 and 2009 is a violation of 6 NYCRR 201-6.5(e) and the Facility's title V permit #8-2614-00205/01801, Condition 2-18.

210. Each of Respondent's violations of 6 NYCRR 201-6.5(e) is a violation of Sections 114 and 502 of the Act.

211. Each of Respondent's violations of Condition 2-18 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

PROPOSED CIVIL PENALTY

EPA's CAA Penalty Authority and Overview of CAA Penalty Policy

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, and January 7, 2009, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the maximum civil penalty per day should be adjusted up to \$27,500 for violations that occurred from January 30, 1997

through March 15, 2004, up to \$32,500 for violations that occurred after March 15, 2004 through January 12, 2009 and up to \$37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations that occurred on or after January 30, 1997, further adjusted 17.23% for violations that occurred March 15, 2004 through January 12, 2009, for a total of 28.95% and further adjusted an additional 9.83% for violations that occurred after January 12, 2009, for a total of 41.63%.

In determining the amount of penalty to be assessed, § 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require. EPA considered these factors and proposes a total penalty, for the violations alleged in this Complaint, of **\$367,685**.

Respondents' violations alleged in Counts 1 through 9 result in Respondent being subject to the assessment of administrative penalties pursuant to § 113(d) of the Act. The proposed penalty has been prepared in accordance with the criteria in § 113(e) of the Act, and in accordance with the guidelines set forth in EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy). The CAA Penalty Policy sets forth EPA's

guidelines concerning the application of the factors to be considered, under § 113(e) of the CAA, in proposing the penalty.

Below are short narratives explaining the reasoning behind the penalties proposed in this Complaint, along with the reasoning behind various general penalty factors and adjustments that were used in the calculation of the total penalty amount.

Gravity Based Penalties

Count 1: Violations of 40 C.F.R. §§ 63.1022(a), 63.2520(a) and Condition 2-19, Item 2-19.1 of the Facility's title V Permit.

The CAA Penalty Policy directs that a penalty of \$5,000 be proposed for a late monitoring violation and also directs that a penalty of between \$5,000 and \$15,000 be proposed for an incomplete report or notice. The count alleges that Respondent failed to timely identify 66 components, which led to the failure to include these components in the Facility's NOCS report. Because one type of violation led to the other type of violation and because the percentage of components not identified at the facility was small, EPA is proposing a penalty of \$5,000 for the combined violations. In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The violations alleged in this Count persisted for 24 months. The CAA Penalty Policy directs that a penalty of \$25,000 be proposed for violations that persist for 24 months. The \$30,000 penalty was adjusted 30% for the violations of the title V condition, which included the 40 C.F.R. §§ 63.1022(a) and 63.2520(a) as applicable requirements, resulting in a proposed penalty, unadjusted for inflation, of \$39,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. The alleged violations occurred from May 2008 through May 2010. Therefore, EPA proposes a \$14,587 inflationary adjustment. The total proposed penalty for the violations alleged in Count 1 is \$53,587.

Count 2: Violations of 40 C.F.R. § 63.1026(b)(1) and Condition 2-19, Item 2-19.1 of the Facility's title V Permit.

The CAA Penalty Policy directs that a penalty of \$15,000 be proposed for a testing violation. This count alleges failures to monitor 66 valves using toxic vapor analyzers (TVAs) to detect leaks, as specified in Method 21 – 2.1.

In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The violations alleged in this Count persisted for 24 months. The CAA Penalty Policy directs that a penalty of \$25,000 be proposed for violations that persist for 24 months. The \$40,000 penalty was adjusted 30% for the violations of the title V condition, which included 40 C.F.R. § 63.1026(b)(1) as an applicable requirement, resulting in a proposed penalty, unadjusted for inflation, of \$52,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. The alleged violations occurred from May 2008 through May 2010. Therefore, EPA proposes a \$19,450 inflationary adjustment. The total proposed penalty for the violations alleged in Count 2 is \$71,450.

Count 3: Violation of 40 C.F.R. § 63.1024(a), as specified in 40 C.F.R. § 63.1025(d) and Condition 2-19, Item 2-19.1 of the Facility's title V Permit.

The CAA Penalty Policy directs that a penalty between \$10,000 and \$15,000 be proposed for a work practice standard violation. This count alleges a failure to conduct an initial repair attempt on valve #5141 within 5 days, which EPA considers to be a work practice violation. In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The violation alleged in this Count persisted for a total of 2 days. The CAA Penalty Policy directs that a penalty of \$5,000 be proposed for a violation that persisted between 0-1 month. The \$15,000 penalty was adjusted 30% for the violation of the title V condition, which included the 40 C.F.R. § 63.1024(a) as an applicable requirement, resulting in a proposed penalty, unadjusted for inflation, of \$19,500.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. The alleged violation occurred during May 19, 2008 through May 21, 2008. Therefore, EPA proposes a \$5,645 inflationary adjustment. The total proposed penalty for the violation alleged in Count 3 is \$25,145.

Count 4: Violations of 40 C.F.R. § 63.1026(b)(2) and Condition 2-19, Item 2-19.1 of the Facility's title V Permit.

The CAA Penalty Policy directs that a penalty of \$5,000 be proposed for a testing violation. This count alleges failures to use correct testing procedure by monitoring pumps using Method 21 calibration gases at a concentration not equal to the applicable leak definition for pumps. In addition, the CAA Penalty

Policy directs that where violations persist, a penalty be proposed for length of violation. The violations alleged in this Count persisted for a total of 13 months. The CAA Penalty Policy directs that a penalty of \$20,000 be proposed for violations that persist for 13 months. The \$25,000 penalty was adjusted 30% for the violations of the title V condition, which included 40 C.F.R. § 63.1024(b)(2) as an applicable requirement, resulting in a proposed penalty, unadjusted for inflation, of \$32,500.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. The alleged violation occurred from May 2008 through June 2009. Therefore, EPA proposes a \$10,994 inflationary adjustment. The total proposed penalty for the violations alleged in Count 4 is \$43,494.

Count 5: Violations of 40 C.F.R. § 63.1024(a), as specified in 40 C.F.R. § 63.1026(d), 40 C.F.R. § 63.1038(b)(7) and Condition 2-19, Item 2-19.1 of the Facility's title V Permit.

The CAA Penalty Policy directs that a penalty between \$10,000 and 15,000 be proposed for a work practice standard violation and a penalty of \$15,000 for failure to keep required records. This count alleges failures to conduct 16 initial attempts at repairs on six pumps each within 5 days and/or failures to maintain documentation of initial repairs. The requirement to conduct initial repairs within 5 days is classified as a work practice requirement and the requirement to maintain documentation is a recordkeeping requirement. In addition, the CAA Penalty Policy directs that where violations persist, a penalty

be proposed for length of violation. The failures to conduct initial attempts at repairs within 5 days and/or maintain documentation of initial repairs persisted over a period of 10 months. The CAA Penalty Policy directs that a proposed penalty of \$15,000 be proposed for violations that persist for 10 months. The \$30,000 penalty was then adjusted 30% for the violations of the title V condition, which included 40 C.F.R. §§ 63.1024(a) and 63.1038(b)(7) as applicable requirements, resulting in a proposed penalty, unadjusted for inflation, of \$39,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. The alleged violations persisted for the following months: May 2008, June 2008, September 2008, October 2008, November 2008, December 2008, January 2009, February 2009, March 2009, April 2009, May 2009, and June 2009. Therefore, EPA proposes a \$13,763 inflationary adjustment, which reflects the inflation adjustments for violations that occurred during this period of time. The total proposed penalty for the violations alleged in Count 5 is \$52,763.

Count 6: Violations of 40 C.F.R. § 63.1024(a), as specified in 40 C.F.R. § 63.1026(d), and/or 63.1038(b)(7) and Condition 2-19, Item 2-19.1 of the Facility's title V Permit

The CAA Penalty Policy directs that a penalty between \$10,000 and 15,000 be proposed for a work practice standard violation and a penalty of \$15,000 for failure to keep required records. This count alleges failures to conduct 16 final repairs on six pumps each within 15 days and/or failures to

maintain documentation of final repairs. The requirement to conduct final repairs within 15 days is classified as a work practice requirement and the requirement to maintain documentation of final repairs is a recordkeeping requirement. In addition, the CAA Penalty Policy directs that where violations persist, a penalty be proposed for length of violation. The failures to conduct final repairs within 15 days persisted over a period of 10 months. The CAA Penalty Policy directs that a proposed penalty of \$15,000 be proposed for violations that persist for 10 months. The \$30,000 penalty was then adjusted 30% for the violation of the title V condition, which included the 40 C.F.R. §§ 63.1024(a) and 63.1038(b)(7) as applicable requirements, resulting in a proposed penalty, unadjusted for inflation, of \$39,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. The alleged violations persisted for the following months: May 2008, June 2008, September 2008, October 2008, November 2008, December 2008, January 2009, February 2009, March 2009, April 2009, May 2009, and June 2009. Therefore, EPA proposes a \$13,763 inflationary adjustment, which reflects the inflation adjustments for violations that occurred during this period of time. The total proposed penalty for the violations alleged in Count 6 is \$52,763.

Count 7: Violations of 40 C.F.R. § 63.1026(b)(4), and/or 40 C.F.R. § 63.1038(c)(2)(i) and Condition 2-19, Item 2-19.1 of the Facility's title V Permit

The CAA Penalty Policy directs that a penalty of \$15,000 be proposed for a testing violation and a penalty of \$15,000 for failure to keep required records. This count alleges failures to conduct visual inspections of pumps and/or failures to maintain documentation of pump visual inspections. In addition, the CAA Penalty Policy directs that where violations persist, a penalty be proposed for length of violation. The violations alleged in this Count persisted for approximately 4 weeks. The CAA Penalty Policy directs that a penalty of \$5,000 be proposed for violations that persist between 0-1 month. The \$20,000 penalty was adjusted 30% for the violations of the title V condition, which included 40 C.F.R. § 63.1026(b)(4) and 40 C.F.R. § 63.1038(c)(2)(i) as applicable requirements, resulting in a proposed penalty, unadjusted for inflation, of \$26,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. The alleged violations occurred during the following four weeks: 5/12/08, 5/26/08, 6/29/09, and 7/6/09. Therefore, EPA proposes a \$9,175 inflationary adjustment. The total proposed penalty for the violations alleged in Count 7 is \$35,175.

Count 8: Violations of 40 C.F.R. § 63.1039(b) and Condition 2-19, Item 2-19.1 of the Facility's title V Permit

The CAA Penalty Policy directs that a penalty of between \$5,000 and \$15,000 be proposed for an incomplete report or notice; and directs that a penalty of \$5,000 be proposed for a late report or notice. Therefore, for each incomplete/late semi-annual MON LDAR periodic report, EPA proposes a penalty of \$5,000. The \$10,000 penalty was adjusted 30% for the violations of the title V condition, which included the 40 C.F.R. § 63.1039(b) as an applicable requirement, resulting in a proposed penalty of \$13,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a \$5,412 inflationary adjustment, which reflects the inflation adjustments for violations that occurred during this period of time. The total proposed penalty for the violations alleged in Count 8 is \$18,412.

Count 9: Violations of § 503 of the Act and Condition 2-18 of the Facility's title V Permit

The CAA Penalty Policy provides a \$5,000 to \$15,000 penalty for an incomplete notice. This count alleges that Kodak did not identify violations of the MON MACT and MON LDAR requirements in the title V Annual Compliance Certifications for 2008 and 2009. Because, the facility's annual certification was, for the most part, complete and because the deviations were reported in the MON LDAR periodic reports, EPA proposes a \$5,000 penalty for each

incomplete annual certification. EPA proposes an unaggravated and unadjusted gravity component penalty for these violations of \$10,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a \$2,895 inflationary adjustment, which reflects the inflation adjustments for violations that occurred during this period of time. The total proposed penalty for the violations alleged in Count 9 is \$12,895.

Title V Adjustment

The CAA Penalty Policy allows for an upward adjustment, by as much as 100%, of the gravity component, for degree of willfulness or negligence and directs that EPA consider, among other things, the extent to which the violator in fact knew of the legal requirements that were violated. It is the Region's practice to upwardly adjust by 30% the gravity component of the proposed penalty for violations of conditions other than those that are solely required by and/or under title V. It does so because the violator's knowledge of the regulatory requirements is further enhanced through the application and permitting process. In this instance, Respondent included its obligation to comply with the MON and MON LDAR regulations in its title V application and was further put on notice of the requirements in its title V Operating Permit. The title V Operating Permit was in effect throughout the entire period of time in which the violations alleged of the MON MACT and MON LDAR occurred. In accordance with this practice, EPA upwardly adjusted by 30% the proposed gravity component for all violations it

alleged in this matter, with the exception of the title V annual certification violations.

Size of Violator

The CAA Penalty Policy directs that a penalty be proposed that takes into account the size of violator determined by the violator's net worth for corporations or net current assets for partnerships. In this matter, the Dun & Bradstreet report indicates that Kodak's net worth is negative \$33 million. The CAA Penalty Policy directs that where a company's net worth is under \$100,000, a \$2,000 penalty be assessed. The SOV component of the penalty may be adjusted should information be discovered that indicates the Respondent's net worth is less or more than estimated.

Economic Benefit

In addition to the gravity component of the proposed penalties, the CAA Penalty Policy directs that EPA determine the economic benefit derived from noncompliance. The CAA Penalty Policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. The CAA Penalty Policy indicates that it is EPA's goal to collect the violator's economic benefit and that EPA may elect not to assess an economic benefit component in enforcement actions where the violator's economic benefit is less than \$5,000.

In this case, the Region determined the cost avoided was *deminimus*. Therefore, EPA did not assess an economic benefit component.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.* The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

Kara E. Murphy
Assistant Regional Counsel
Office of Regional Counsel, Air Branch

U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the

proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Kara E. Murphy, at (212) 637-3211 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

Payment of Penalty in lieu of Answer, Hearing and/or Settlement

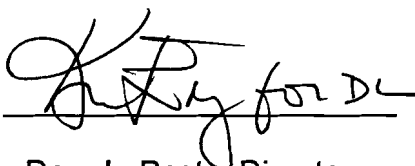
Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) which appear on the first page of this Complaint. The check must be mailed to:

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

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: _____

3/31/11



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

To: Philip J. Faraci
President and COO
Eastman Kodak Company
343 State Street
Rochester, NY 14650

cc: Mark E. Miles
Health, Safety and Environment
5th Floor, Building 56, Kodak Park
Eastman Kodak Company
Rochester, NY 14652-4543

Robert Stanton, Director
Bureau of Stationary Sources
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Colleen McCarthy, Air Counsel
Bureau of Stationary Sources
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Thomas Marriott, Regional Air Pollution Control Engineer
New York State Department of Environmental Conservation, Region 8
6274 E. Avon-Lima Road
Avon, NY 14414-9519

Leo Bracci, Associate Attorney
Legal Affairs
New York State Department of Environmental Conservation, Region 8
6274 E. Avon-Lima Road
Avon, NY 14414-9519

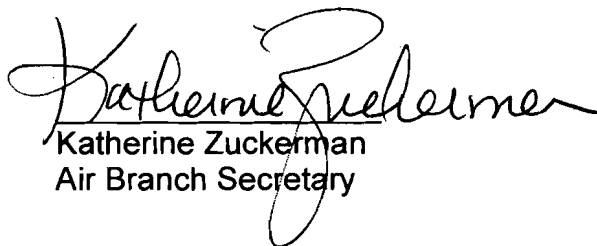
CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing the docket number CAA-02-2011-1209, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by FedEx, to:

Philip J. Faraci
President and COO
Eastman Kodak Company
343 State Street
Rochester, NY 14650

I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: April 1, 2011
New York, New York


Katherine Zuckerman
Air Branch Secretary



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 31 2011

FEDEX – NEXT DAY DELIVERY

Philip J. Faraci
President and COO
Eastman Kodak Company
343 State Street
Rochester, NY 14650

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING**
In the matter of: Eastman Kodak Company, CAA-02-2011-1209

Dear Mr. Faraci:

Enclosed herewith is a copy of the above-referenced COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING (Complaint) directed to you on behalf of Eastman Kodak Company, which is being filed for the purpose of proposing a penalty pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401 et seq., § 7413(d). The Complaint alleges violations of Sections 112, 114, and Title V of the Act. The total amount of the penalty proposed is \$367,685.

I direct your attention to the section of the Complaint entitled, "NOTICE OF OPPORTUNITY FOR A HEARING." If you wish to contest any of the allegations of the Complaint or the amount of the proposed penalty, you must do so within the time specified in the notice or you may lose the opportunity for a hearing. You must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or EPA may file a motion for default judgment. If the motion is granted, the proposed penalty will become due and payable thirty (30) days after a final order. A copy of the procedural rules is enclosed for reference.

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 APR - 5 A 10: 57
REGIONAL HEARING
CLERK

Counsel designated to appear on behalf of the Complainant in this matter is Kara E. Murphy, who can be reached at (212) 637-3211 or by mail at the address listed below. I call your attention to the section of the Complaint entitled, "SETTLEMENT CONFERENCE." EPA is prepared to begin to pursue settlement of this matter immediately and I encourage you or your attorney, if you are represented, to contact EPA counsel regardless of whether you are interested in contesting this matter.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

40 C.F.R. Part 22, Consolidated Rules of Practice Governing the
Administrative Assessment of Civil Penalties and the Revocation or
Suspension of Permits.

Clean Air Act Stationary Source Civil Penalty Policy

✓ cc: Regional Hearing Clerk (With: Original Complaint with Certificate of
Service and one copy of Complaint with Certificate of Service):

Karen Maples
Regional Hearing Clerk
United States Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007-1866

Counsel on behalf of EPA:

Kara E. Murphy
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007-1866

cc: Mark E. Miles
Health, Safety and Environment
5th Floor, Building 56, Kodak Park
Eastman Kodak Company
Rochester, NY 14652-4543

Robert Stanton, Director
Bureau of Stationary Sources
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Colleen McCarthy, Air Counsel
Bureau of Stationary Sources
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Thomas Marriott, Regional Air Pollution Control Engineer
New York State Department of Environmental Conservation, Region 8
6274 E. Avon-Lima Road
Avon, NY 14414-9519

Leo Bracci, Associate Attorney
Legal Affairs
New York State Department of Environmental Conservation, Region 8
6274 E. Avon-Lima Road
Avon, NY 14414-9519