UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:	:	
	:	**Docket No. RCRA/CWA-03-2015-0240**
Brenntag Northeast, Inc.,	:	
	:	
Respondent,	:	
	:	
	:	
Brenntag Northeast, Inc.	:	
81 West Huller Lane	:	
Reading, PA 19605,	:	
	:	
Facility.	:	**Administrative Complaint and**
	:	**Notice of Opportunity for Hearing**
	:	**Under RCRA Section 3008(a) and (g),**
	:	**42 U.S.C. § 6928 (a) and (g), and**
	:	**CWA Section 311(b), 33 U.S.C. § 1321(b)**
	:	

I. PRELIMINARY STATEMENT

1. This Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended, ("RCRA"), 42 U.S.C. § 6928(a) and (g), and Section 311(b) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act, as amended, ("CWA"), 33 U.S.C. § 1321(b), and in accordance with the United States Environmental Protection Agency's ("EPA" or "Agency") 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 (Enclosure A).

2. The Complainant is the Director of the Office of Enforcement, Compliance, and Environmental Justice, EPA Region III, ("Complainant"), who has been duly delegated the authority to bring this action.

3. The Respondent is Brenntag Northeast, Inc. ("Respondent" or "Brenntag"), a corporation duly incorporated under the laws of Pennsylvania.

4. Through this action, the Complainant is seeking assessment of civil penalties against Respondent for violations discovered at Respondent's chemical distribution facility, located at 81 West Huller Lane in Reading, Pennsylvania 19605 ("Facility").

5. This Complaint is issued under the authority vested in the Administrator of EPA by Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and Section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B). The Administrator has delegated her authority under RCRA to the Regional Administrators by EPA Delegation 8-9-A, dated May 11, 1994, and delegated her authority under the CWA to the Regional Administrators by EPA Delegation 2-29, dated April 16, 1984. These authorities were further delegated to the Director of the Office of Enforcement, Compliance, and Environmental Justice, EPA Region III, by Regional Delegations 8-9-A, dated September 1, 1998, and 2-51, dated September 1, 2005.

STATUTORY AND REGULATORY BACKGROUND

RCRA AUTHORITY

6. RCRA establishes a comprehensive program to be administered by the Administrator of the EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste under 42 U.S.C. § 6901 – 6992k.

7. Pursuant to its authority under RCRA § 3004(a), 42 U.S.C. § 6924(a), EPA promulgated regulations at 40 C.F.R. Part 260 through 272, which are applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities ("RCRA regulations"). The RCRA regulations generally prohibit treatment, storage, and disposal of hazardous waste without a permit or "interim status." The RCRA regulations prohibit land disposal of certain hazardous wastes and provide detailed requirements to govern the activities of those who are lawfully permitted to store, treat and dispose of hazardous waste.

8. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the "Pennsylvania Hazardous Waste Management Program") *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations ("PaHWR") were authorized by EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A (51 Fed. Reg. 1791). The PaHWR have been re-authorized several times subsequent to this original authorization, including most recently effective June 29, 2009 (74 Fed. Reg. 19453). The provisions of Pennsylvania's current authorized revised PaHWR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a). Many of the RCRA regulations are incorporated by reference into the PaHWR.

9. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to initiate an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, including EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

10. Any person who violates any requirement of an authorized state hazardous waste management program is subject to a civil monetary penalty of not more than $25,000 for each day of violation, adjusted upward to $37,500 by the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), requires that EPA consider the following factors when assessing a penalty; the seriousness of the violations and any good faith efforts of Respondent to comply with the applicable requirements.

11. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), by email message, dated August 19, 2015, EPA notified the Pennsylvania Department of Environmental Protection ("PADEP") of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

CWA/SPCC AUTHORITY

12. Congress enacted the CWA, 33 U.S.C. §§ 1251 et seq., in 1972. In Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.

13. By Executive Order 12777, the President delegated the authority to promulgate regulations under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), to EPA for non-transportation-related onshore and offshore facilities.

14. Pursuant to its delegated authority under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA promulgated the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112 (the "SPCC Regulations").

15. Pursuant to 40 C.F.R. § 112.1(b), the SPCC Regulations apply to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. Pursuant to 40 C.F.R. § 112.1(d), the SPCC Regulations do not apply to any owner or operator of a facility with an aggregate aboveground oil storage capacity of 1,320 gallons or less.

16. Pursuant to 40 C.F.R. § 110.3, discharges of oil that may be harmful include discharges of oil that violate applicable water quality standards or cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

17. According to 40 C.F.R. § 112.3, an owner or operator subject to the SPCC Regulations must prepare in writing and implement a Spill Prevention, Control, and Countermeasure ("SPCC") plan, in accordance with § 112.7 and any other applicable section, including but not limited to § 112.8.

18. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and implemented by 40 C.F.R. Part 19, *Adjustment of Civil Monetary Penalties for Inflation*, to file an Administrative Complaint seeking a civil penalty of $16,000 per day for each day during which a violation continues, up to a maximum of $177,500, for violations occurring after January 12, 2009.

GENERAL ALLEGATIONS

19. Since the early 1970s, continuing through the date of the filing of this Complaint, and at all times relevant to this Complaint, Brenntag and/or its corporate predecessor, Textile Chemical Company, Inc., has owned and operated a chemical distribution facility located at 81 West Huller Lane in Reading, Pennsylvania (i.e., the Facility).

20. To evaluate Brenntag's compliance with certain regulatory requirements at the Facility, EPA representatives conducted the following inspections relevant to this enforcement action:

a. A Resource Conservation and Recovery Act inspection on July 29 and 30, 2014 ("RCRA Inspection"), and

b. A Clean Water Act, Spill Prevention inspection on May 20, 2015 ("SPCC Inspection").

Collectively, these inspections will be referred to as the "Inspections."

21. On March 23, 2015, EPA issued to Brenntag an information request letter ("IRL") pursuant to Section 308 of the Clean Water Act ("CWA"), 33 U.S.C. § 1318; Section 3007(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6927(a); and Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9604(e). Brenntag provided responses dated May 11, 18, 26, 27, and June 5, 17, 30, and July 13, 18, 2015 (collectively, "IRL Responses").

22. Brenntag, a corporation, is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 25 Pa. Code § 260a.10, Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

COMPLAINT

23. Based on information gathered by during the Inspections, through Respondent's IRL Responses and through additional correspondence, Complainant alleges the following:

RCRA GENERAL ALLEGATIONS

24. 25 Pa. Code § 270.1, which incorporates by reference 40 C.F.R. § 270.1(c), requires an owner or operator to obtain a permit for the treatment, storage, and disposal of any hazardous

waste as identified or listed in 40 C.F.R. Part 261. Under 40 C.F.R. § 270.30, as incorporated into the PaHWR by reference, a RCRA permit holder must comply with all conditions of the issued hazardous waste permit.

25. 25 Pa. Code § 270.1, which incorporates by reference 40 C.F.R. § 270.1(c)(2)(i), sets forth a 90-day exception to the permit requirement allowing a generator to accumulate hazardous waste on-site in containers or tanks for 90 days or less without a permit so long as such accumulation is in compliance with 40 C.F.R. § 262.34.

26. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34, provides that, to be eligible for the 90-day permit exemption, a generator must comply with the standards in, *inter alia*, Subparts I, J, and BB of 40 C.F.R. Part 265. These conditions are further described in Paragraph 50 below.

27. Pursuant to 40 C.F.R. § 262.34(b), a generator who stores hazardous waste for more than 90 days is subject to the permit requirements of 40 C.F.R. Part 270 unless such generator has been granted an extension to the 90-day period due to unforeseen, temporary, and uncontrollable circumstances.

28. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, defines "generator" as any person whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.

29. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, defines "owner" as the person who owns a facility or part of a facility.

30. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, defines "operator" as the person responsible for the overall operation of a facility.

31. 25 Pa. Code § 260a.10 defines "person" as, *inter alia*, a corporation.

32. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, defines "hazardous waste" as that term is defined in 40 C.F.R. § 261.3.

33. 25 Pa. Code § 260a.10 defines "facility" as "the land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored, or disposed."

34. 25 Pa. Code § 260a.10 defines "treatment" as "a method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of waste to neutralize the waste or to render the waste nonhazardous, safer for transport, suitable for recovery, suitable for storage, or reduced in volume....The term includes an activity or processing designed to change the physical form or chemical composition of waste to render it neutral or nonhazardous."

35. 25 Pa. Code 260a.10 defines "storage" as "the containment of a waste on a temporary basis that does not constitute disposal of the waste. It will be presumed that the containment of waste in excess of 1 year constitutes disposal. This presumption can be overcome by clear and convincing evidence to the contrary."

36. 25 Pa. Code 260a.10 defines "disposal" as "the incineration, deposition, injection, dumping, spilling, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of [the] Commonwealth."

COUNT I – OPERATION OF A TREATMENT, STORAGE AND DISPOSAL FACILITY ("TSDF") WITHOUT A PERMIT

37. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

38. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), provides that no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.

39. In 1980, Textile Chemical Company, Inc. ("Textile Chemical Company") provided a notification to EPA that it was a large quantity generator of hazardous waste, because it was generating greater than 1,000 kilograms per month of hazardous waste at the Facility. In response, in September 1980, the Facility was assigned EPA ID Number PAD002361764.

40. In May 2001, Textile Chemical Company submitted a Notification of Regulated Activity Form to EPA, informing EPA that the company had changed its name to Brenntag Northeast, Inc., but that no change in ownership had occurred.

41. At all times relevant to the allegations in this Complaint, Respondent was storing hazardous waste in two rectangular aboveground tanks fabricated of carbon steel with welded seams and joints (the "Accumulation Tanks"). The first Accumulation Tank was constructed in 1988, and the second Accumulation Tank was constructed in approximately 1992.

42. Upon information and belief, each Accumulation Tank has the capacity to store 1,350-gallons.

43. Each Accumulation Tank has a funnel located on the side of the tank, through which hazardous wastes are poured from buckets by personnel at the Facility. At the time of the RCRA Inspection, the funnels were open and had no caps.

44. Respondent's Facility was, at all times relevant to the allegations set forth in this Complaint, a hazardous waste storage "facility" as that term is defined in 25 Pa. Code § 260a.10.

45. Respondent was, at all times relevant to the allegations set forth in this Complaint, the "owner" of a "facility" (the Facility), as those terms are defined in 40 C.F.R. § 260.10, and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 Pa. Code § 260a.10.

46. Respondent was, at all times relevant to the allegations set forth in this Complaint, the "operator" of the Facility, as that term is defined in 40 C.F.R. § 260.10, and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 Pa. Code § 260a.10.

47. Respondent was, at all times relevant the allegations set forth in this Complaint, a "generator" of "solid waste" and "hazardous waste" at the Facility, as these terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.

48. At all times relevant to the allegations set forth in this Complaint, Respondent was engaged in the "storage" of "solid waste" and "hazardous waste" in "container[s]" and "existing tank systems" at the Facility, as the term "storage" is defined in 25 Pa. Code § 260a.10, and as the remaining terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.

49. The federal regulations at 40 C.F.R. § 260.10 define an "existing tank system" as a tank system used for the storage or treatment of hazardous waste that is in operation, or for which installation has commenced on or prior to July 14, 1986. However, the PaHWR, at 25 Pa. Code § 260a.1, substitute the date of January 16, 1993. Respondent's two Accumulation Tanks, fabricated in 1988 and in approximately 1992, are "existing tank systems" under the PaHWR.

50. Pursuant to 25 Pa. Code § 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a), generators of hazardous waste may accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than 90 days and remain exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*:

a. the condition set forth at 40 C.F.R. § 262.34(a)(1)(i),which requires, in relevant and applicable part, that when hazardous waste is placed in containers, the generator must comply "with the applicable requirements of Subpart[] I ... of 40 C.F.R. Part 265[,]" including the 40 C.F.R. Part 265, Subpart I requirement in 40 C.F.R. § 265.173(a) (pertaining to the "[m]anagement of containers") which provides that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste[;]"

b. the condition set forth at 40 C.F.R. § 262.34(a)(2),which requires that "[t]he date upon which each period of accumulation begins is clearly marked and visible for inspection on each container[;]"

c. the condition set forth at 40 C.F.R. § 262.34(a)(3),which requires that "[w]hile being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste[;]"

d. the condition set forth at 40 C.F.R. § 262.34(a)(4),which requires, in relevant and applicable part, that "[t]he generator complies with the requirements for owners or operators in Subpart[] C . . . in 40 CFR Part 265. . .[,]" including the 40 C.F.R. Part 265, Subpart C, requirement in 40 C.F.R. § 265.31 (entitled "Maintenance and operation of facility"), that "[f]acilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment[;]" and

e. the condition set forth at 40 C.F.R. § 262.34(a)(4), which requires, in relevant and applicable part, that "[t]he generator complies with the requirements for owners or operators in Subpart[] C . . . in 40 CFR Part 265. . .[,]" including the 40 C.F.R. Part 265, Subpart C, requirement in 40 C.F.R. § 265.16, that "[f]acility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this [Part 265]."

f. the condition set forth at 40 C.F.R. § 262.34(a)(4), which requires, in relevant and applicable part, that "[t]he generator complies with the requirements for owners or operators in Subpart[] C . . . in 40 CFR Part 265. . .[,]" including the 40 C.F.R. Part 265, Subpart CC, requirements pertaining to tank storing hazardous waste in excess of 500 parts per million by weight ("ppmw") volatile organic compounds ("VOC").

51. At the time of the RCRA Inspection on July 29 - 30, 2014, Respondent was storing a variety of hazardous wastes at the Facility resulting from the cleanout of chemical containers, flushing of mixing lines, and cleanup of spilled chemical products. The hazardous wastes were stored in at least two Accumulation Tanks and in a variety of containers located in several areas of the Facility. These container storage areas include: the loading area, through which approximately 1 million pounds of chemicals are transferred on a typical work day; a number of warehouses behind the loading area; an open area behind the warehouses where chemicals stored outside in containers; and the laboratory.

52. At all times relevant hereto, Respondent did not have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference into 25 Pa. Code § 270a.1, for the storage of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference into 25 Pa. Code § 270a.1.

53. Respondent did not qualify for the exemption found in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), because of its failure to comply with all of the conditions of this exemption.

54. The following acts or omissions prevented Respondent from meeting the regulatory permit exemption requirements in 40 C.F.R. § 262.34(a):

a. At the time of the RCRA Inspection, in the laboratory, there were several containers of Kauri-butanol value (Kb value) solvent waste and potassium fluorine (KF) solution, generated through chemical testing, which were not labeled as hazardous waste, as required by 40 C.F.R. § 262.34(a)(3).

b. At the time of the RCRA Inspection, in the Facility loading area, there were 3 drums containing hazardous waste that were generated when trucks carrying chemical products were cleaned out, or when containers of chemical products broke. These drums were not labeled as containing hazardous waste and the lids were not secure, as required by 40 C.F.R. § 262.34(a)(3), and were open even thought it was not necessary to add or remove waste, in violation of 40 C.F.R. § 265.173(a).

c. At the time of the RCRA Inspection, outside of the warehouses in the loading dock area, there were a number of buckets and drums holding hazardous waste that were not labeled as containing hazardous waste, as required by 40 C.F.R. § 262.34(a)(3), and the lids were either open or nonexistent, even thought it was not necessary to add or remove waste, in violation of 40 C.F.R. § 265.173(a).

d. Since approximately 1992, two Accumulation Tanks were being used to store hazardous waste solvent with greater than 500 parts ppmw VOCs. At the time of the RCRA Inspection, Facility staff were uncertain of their volatile organic content, and were unsure whether the Accumulation Tanks were subject to the Subpart CC requirements of 40 C.F.R. Part 264, discussed in Count IX, below. There were no engineering certifications for the Accumulation Tanks available at the Facility, in violation of 40 C.F.R. § 262.34(a)(1)(ii). The Accumulation Tanks were required to have air emission controls. Accumulation Tank 2 did not have adequate air emissions controls, in violation of 40 C.F.R. § 265.1085.

55. As a result of these conditions, from at least five years prior to the filing of this Complaint, through at least the time of the RCRA Inspection on July 29-30, 2014, Respondent did not qualify for the generator accumulation exemption for the wastes described in Paragraph 54, immediately above.

56. Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), by operating several hazardous waste storage units at the Facility without a permit or interim status, from at least five years prior to the filing of this Complaint, through at least the time of the RCRA Inspection on July 29-30, 2014.

COUNT II – FAILURE TO MAKE A HAZARDOUS WASTE DETERMINATION

57. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

58. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, provides that a person who generates a solid waste must determine if that waste is a hazardous waste.

59. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, which, in turn, incorporates by reference 40 C.F.R. § 261.2, defines "solid waste" to include materials that are abandoned by being disposed of.

60. Respondent failed to make a hazardous waste determination for the following solid wastes that were generated at the Facility, and observed during the RCRA Inspection:

a. A long white stain, about 50 feet in length, leading to a storm drain, later determined to be waste sulfuric acid (D002), observed during the RCRA Inspection.

b. A large stain on the pavement, in the vicinity of several stacks of black drums containing mineral oil and isobutyl alcohol, observed during the RCRA Inspection.

c. A sheen on the ground in the area of a low-lying sump in the rear portion of the Facility, believed to be oil, observed during the RCRA Inspection.

d. A pink-purple liquid leaking onto the ground from a tote, observed during the RCRA Inspection. Upon information and belief, this liquid may be either permanganate solution or Fluidguard.

e. Dust in a Shop-Vac vacuum cleaner which was used to vacuum up dust accumulating in the Facility loading area.

61. Respondent violated the requirements of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, by failing to make a hazardous waste determination for solid wastes generated at the Facility, as described above.

COUNT III – FAILURE TO PROVIDE INITIAL AND REFRESHER HAZARDOUS WASTE TRAINING

62. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

63. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(a) and (c), requires the owner or operator of a hazardous waste facility to provide initial hazardous waste training and annual refresher training to each person employed in a position related to hazardous

waste management. The program may consist of classroom instruction or on-the-job training which instructs personnel in compliance with the hazardous waste management regulations.

64. From at least 2010 until May 2015, Respondent failed to provide to at least 13 of its employees, who are employed in positions related to hazardous waste management, initial hazardous waste training and refresher training on an annual basis.

65. For the years 2010 through May 2015, Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16 (a) and (c), by failing to provide Facility personnel engaged in hazardous waste management with the required initial hazardous waste training and annual refresher training.

COUNT IV – FAILURE TO MAINTAIN TRAINING AND PERSONNEL RECORDS

66. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

67. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d), requires the owner and operator of a hazardous waste facility to maintain records which document (1) the job title for each position at the facility related to hazardous waste management and the name of the employee filling each job, (2) a written job description of each such position, (3) a written description of the type and amount of introductory and continuing training that will be given to each person filling such position, and (4) records that document the training and job experience given to and completed by facility personnel who perform hazardous waste management.

68. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(e), provides that training records for current personnel must be kept until closure of the facility, and that training records for former employees must be kept for at least three years from the date the employee last worked at the facility.

69. During each of the years 2010 through 2015, Respondent employed at least 13 people at the Facility in positions related to hazardous waste management.

70. During each of the years 2010 through May 2015, Respondent failed to maintain records which include the documented job title and written job description for each position related to hazardous waste management at the Facility, and the name of each employee assigned to each job.

71. During the years 2010 through May 2015, Respondent failed to maintain records that document the training and job experience given to and completed by Facility personnel who perform hazardous waste management.

72. From at least 2010 through May 2015, Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16 (d), by failing to maintain

the required hazardous waste training and personnel records for employees in positions related to hazardous waste management.

COUNT V – FAILURE TO CONDUCT AND DOCUMENT DAILY HAZARDOUS WASTE TANK INSPECTIONS

73. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

74. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.195(b) and (c), requires the owner and operator of a hazardous waste tank system to inspect and document the following at least once each operating day: data gathered from monitoring and leak detection equipment; the condition of the above-ground portions of tank systems to detect corrosion or releases of waste; and the construction materials and the area immediately surrounding the tank systems, including the secondary containment system, to detect erosion or signs of releases of hazardous waste.

75. Respondent failed to perform all of its required daily inspections of the Accumulation Tank #2 for the year 2013.

76. Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.195(b), by failing to perform inspections of the Accumulation Tanks at least once each operating day.

COUNT VI – FAILURE TO MAINTAIN ADEQUATE SECONDARY CONTAINMENT FOR HAZARDOUS WASTE TANKS

77. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

78. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.193(a)(1), requires that all new and existing tank systems have secondary containment that meets the requirements of § 264.193 prior to their being put into service.

79. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.193(b), requires that "[s]econdary containment systems must be (1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and (2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed."

80. At all times relevant to the allegations set forth in this Complaint, Respondent failed to have a secondary containment system designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system, and capable of detecting and collecting releases and accumulated liquids until the collected material could be removed.

81. Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.193(a)(1) and (b), by failing to install and maintain secondary containment for the two Accumulation Tanks that meets the requirements of 40 C.F.R. § 264.193.

COUNT VII – FAILURE TO PROVIDE HAZARDOUS WASTE TANK SYSTEM WITH ADEQUATE LEAK DETECTION

82. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

83. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.193(a) and (c)(3), requires the owner and operator of a hazardous waste tank system to provide a leak-detection system for the tank system's secondary containment system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practical time if the owner or operator can demonstrate to EPA that existing detection technologies or site conditions will not allow detection of a release within 24 hours.

84. Respondent failed to provide a leak-detection system for the two Accumulation Tanks at the Facility.

85. Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.193(c)(3), by failing to provide a leak-detection system for the two Accumulation Tanks at the Facility.

COUNT VIII – FAILURE TO MAINTAIN CERITIFIED INTEGRITY ASSESSMENT OF EXISTING HAZARDOUS WASTE TANK SYSTEM

86. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

87. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.191(a), requires that, for each existing tank system that does not have secondary containment meeting the requirements of § 264.193, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with 40 C.F.R. § 270.11(d), that attests to the tank system's integrity. 40 C.F.R. § 264.191(b) states that this assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture or fail.

88. Upon information and belief, during the RCRA Inspection on July 29-30, 2014, Respondent did not have adequate secondary containment for the two Accumulation Tanks, as set forth in Count VI, above.

89. During the RCRA Inspection on July 29-30, 2014, and as stated in Respondent's IRL Responses, Respondent was not able to locate a copy of an initial integrity test performed or Professional Engineer's certification for its two Accumulation Tanks.

90. In its IRL Response, dated July 18, 2015, Respondent provided welder qualification documents for the two Accumulation Tanks. This documentation is not equivalent to the Professional Engineer's certification required by 40 C.F.R. § 264.191.

91. Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.191, by failing to maintain the certified integrity assessment of its two Accumulation Tanks at the Facility.

COUNT IX – FAILURE TO PROVIDE AIR EMISSIONS CONTROLS FOR HAZARDOUS WASTE TANKS SUBJECT TO 40 C.F.R. 264 SUBPART CC

92. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

93. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.1082(b), requires that owners and operators control air pollution emissions from each hazardous waste tank that is not exempt under § 264.1082(b), in accordance with the requirements under 40 C.F.R. § 264.1084.

94. 40 C.F.R. § 264.1084(b)(1) provides that an owner or operator may control air pollution emissions from a hazardous waste tank using either Tank Level 1 controls, as described in 40 C.F.R. § 264.1084(c), or Tank Level 2 controls, as described in 40 C.F.R. § 264.1084(d), if it meets the following conditions:

a. The hazardous waste in the tank has a maximum organic vapor pressure limit that does not exceed the vapor pressure limit for the tank's design.

b. The hazardous waste in the tank is not heated by the owner or operator to a temperature that causes it to exceed the vapor pressure limit for the tank's design.

c. The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in 40 C.F.R. § 265.1081.

95. 40 C.F.R. § 264.1084(b)(2) provides that a hazardous waste tank that does not meet the conditions set forth in 40 C.F.R. § 264.1084(b)(1), the owner or operator shall control air pollutant emissions from the tank using Tank Level 2 controls. However, Tank Level 2 controls are only applicable to tanks with features not relevant here.

96. 40 C.F.R. § 264.1084(c) provides that owners and operators controlling air pollutions emissions from a tank using Tank Level 1 controls shall meet the following requirements:

a. The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank before the first time the hazardous waste is placed in the tank.

b. The tank shall be equipped with a fixed roof designed to meet the specifications in 40 C.F.R § 1084(c)(2)(i) – (iv).

c. With exceptions not relevant here, whenever hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position.

d. The owner or operator shall inspect the air emission control equipment in accordance with the requirements set forth at 40 C.F.R. § 264.1084(c)(4)(i) – (iv).

97. At all times relevant to the allegations set forth in this Complaint, Accumulation Tank 2 at the Facility had a funnel through which Facility personnel would pour buckets of hazardous waste. At the time of the RCRA Inspection on July 29-30, 2014, the funnel had a flapper-style cap which had no gasket, no latch, and would not seal, therefore allowing air emissions to escape the Tank uncontrolled.

98. At all times relevant to the allegations set forth in this Complaint, Accumulation Tank 2 was not exempt under 40 C.F.R. § 264.1082.

99. Even if Accumulation Tank 2 was eligible to control air emissions through Tank Level 1 or Tank Level 2 controls, the Tank with its flapper-style cap did not meet the requirements of Tank Level 1 or Tank Level 2 controls, in particular 40 C.F.R. § 264.1084(c)(2)(iii).

100. Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.1082(b) and 40 C.F.R. § 264.1084, by failing to control air pollution emissions from Accumulation Tank 2, which was subject to 40 C.F.R. Part 264, Subpart CC.

COUNT X – FAILURE TO LABEL AND MANAGE UNIVERSAL WASTE LAMPS

101. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

102. With exceptions not herein relevant, 25 Pa. Code § 266b.1 incorporates by reference 40 C.F.R. Part 273, relating to standards for Universal Waste Management.

103. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. §§ 273.1(a)(4) and 273.5(a), provides, with exceptions not herein applicable, that the 40 C.F.R. Part 273 Standards for Universal Waste Management apply to lamps, as described in 40 C.F.R. § 273.9.

104. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9, defines the term "lamp" or "universal waste lamp" to mean "the bulb or tube portion of an electric lighting

device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps."

105. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9, defines the term "Universal Waste" to include the following hazardous wastes that are subject to the universal waste requirements of 40 C.F.R. Part 273: "Lamps as described in § 273.5."

106. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9, defines the term "generator" to mean any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter, or whose act first causes a hazardous waste to become subject to regulation.

107. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9, defines the term "Universal Waste Handler" to mean a generator (as defined in to 40 C.F.R. § 273.9) of universal waste; or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

108. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9, defines the term "Small Quantity Handler of Universal Waste" to mean "a universal waste handler (as defined in [40 C.F.R. § 273.9]) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time."

109. At the time of the RCRA Inspection on July 29-30, 2014, Respondent was not storing more than 5,000 kilograms of universal waste at the Facility, and therefore was at that time a "Small Quantity Handler of Universal Waste," subject to the Standards for Small Quantity Handlers of Universal Waste set forth at 40 C.F.R. Part 273, Subpart B.

110. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), requires that, for small quantity generators of universal waste lamps, each lamp or container or package containing such lamps, must be clearly marked or labeled with one of the following phrases: "Universal Waste-Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)."

111. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), requires that a small quantity handler of universal waste manage lamps in a way that prevents releases of any universal waste. "A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions."

112. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), requires that "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. The handler may make this demonstration by [among other methods] : (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 battery or thermostat) with the date it became a waste or was received; (3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received."

113. At the time of the RCRA Inspection on July 29-30, 2014, Respondent failed to label two containers of universal waste lamps or the lamps themselves with the phrases "Universal Waste-Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)," located in the Facility maintenance area.

114. At the time of the RCRA Inspection on July 29-30, 2014, Respondent failed to keep closed one container of universal waste lamps located in the Facility maintenance area. Two of the bulbs were not stored in containers or packages that were structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps.

115. At the time of the RCRA Inspection on July 29-30, 2014, Respondent failed to mark accumulation dates on, or have inventory records for, two containers of universal waste lamps, or the individual lamps themselves, located in the Facility maintenance area.

116. At the time of the RCRA inspection on July 29-30, 2014, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(a) and (e), by failing to label or mark two containers of universal waste lamps, or the individual lamps themselves, with one of the required phrases.

117. At the time of the RCRA inspection on July 29-30, 2014, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference § 273.13(d)(1), by failing to keep closed one container of universal waste lamps, and by failing to store two lamps in containers or packages that were structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps.

118. At the time of the RCRA inspection on July 29-30, 2014, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), Respondent failed to mark accumulation dates on, or have inventory records for, two containers of universal waste lamps, or the individual lamps themselves.

SPCC GENERAL ALLEGATIONS

119. 40 C.F.R. § 112.3(a) requires the owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as

described in [40 C.F.R. Part 110], into or upon the navigable waters of the United States or adjoining shorelines, to prepare an SPCC Plan.

120. "Oil" is defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), for purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredge spoil. See also 40 C.F.R. § 112.2.

121. "Discharge" is defined by Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and by 40 C.F.R. § 112.2, to include, with exclusions not relevant here, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping other than that for which a facility has a permit under Section 402 of the CWA, 33 U.S.C. § 1342.

122. Discharges of oil in such quantities that may be harmful to the public health or welfare or the environment include discharges of oil that: (a) violate applicable water quality standards; or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. 40 C.F.R. § 110.3.

123. At all times relevant to the allegations set forth in this Complaint, Respondent's Facility was and continues to be 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.

124. At all times relevant to the allegations set forth in this Complaint, Respondent's Facility was and continues to be a "non-transportation related facility" under the definition incorporated by reference at 40 C.F.R. § 112.2, set forth in Appendix A thereto.

125. At all times relevant to the allegations set forth in this Complaint, Respondent was and continues to be engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, or consuming oil or oil products at the Facility.

126. At all times relevant to the allegations set forth in this Complaint, Respondent was and continues to be the "owner and operator" of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

127. Upon information and belief, Respondent has been storing oil at the Facility since at least 1991.

128. At the time of the SPCC Inspection on May 20, 2015, Respondent was storing oil at the Facility, within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 112.2, in the following forms and in the following above-ground storage tanks and containers:

a. 11,000-gallon tank containing mineral spirits;
b. 10,000-gallon tank containing diesel fuel;
c. 2,000-gallon tank containing diesel fuel;

d. 400-gallon blue cube containing motor oil;
e. 300-gallong red cube containing motor oil;
f. 275-gallon black tank containing waste oil;
g. 275-gallon black tank containing waste oil;
h. In Outdoor Storage Area #1 – totes, intermediate bulk containers ("IBCs"), and drums ranging in size between 55 and 275 gallons, for a total oil storage capacity of approximately 30,000; and
i. In Outdoor Storage Area #2 – totes, IBCs and drums ranging in size between 55 and 275 gallons, for a total oil storage capacity of approximately 80,000.

129. At the time of the SPCC Inspection on May 20, 2015, Respondent was storing approximately 580,180 gallons of oil.

130. The Facility is located within one-half mile of the Schuylkill River.

131. Pursuant to 40 C.F.R. 112.1(d)(1)(i), the determination of whether a facility could reasonably be expected to discharge oil to navigable waters "must be based solely upon consideration of the geographical and location aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and must exclude consideration of manmade features such as dikes, equipment or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in [Section 112.1(b)]."

132. Oil spilled at the Facility would flow from the oil storage areas described above, through storm drains and storm sewers located at the Facility, to Retention Basin #1, through Outfall #14, underneath the Facility through a storm sewer, through Outfall #10, into a culvert along Huller lane, through the culvert and could reasonably be expected to discharge into the Schuylkill River.

133. In addition, oil spilled at the Facility could reasonably be expected to flow from the oil storage areas described above, over land and into the swale running along the eastern edge of the Facility property, through Outfall #10, into a culvert along Huller lane, through the culvert and could reasonably be expected to discharge into the Schuylkill River.

134. The Schuylkill River is a "navigable water" of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

135. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities (as defined by 40 C.F.R. § 110.3) into or upon a navigable water of the United States or its adjoining shorelines.

136. Pursuant to 40 C.F.R. §§ 112.1, the Facility is and , at the time of the SPCC violations alleged herein, subject to the oil spill prevention requirements of 40 C.F.R. Part 112, and was required to prepare and implement an SPCC Plan.

COUNT XI - FAILURE TO PREPARE A TIMELY AND ADEQUATE SPILL PREVENTION, CONTROL AND COUNTERMEASURE PLAN

137. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

138. The SPCC Regulations at 40 C.F.R. Part 112 first became effective in 1974.

139. At the time of the SPCC Inspection on May 20, 2015, Respondent had an SPCC Plan for the Facility with a Professional Engineer's seal dated April 8, 2014.

140. From the commencement of oil storage at the Facility in 1991 through April 2014, Respondent had no SPCC Plan for the Facility.

141. From 1991 to April 2014, Respondent failed to have an SPCC Plan for the Facility, in violation of 40 C.F.R. § 112.3(a).

142. Respondent's SPCC Plan for the Facility, dated April 8, 2014, has been and continues to be inadequate because of the following deficiencies:

a. The SPCC Plan does not contain a complete facility diagram showing the location and content of each fixed oil storage container, as required by 40 C.F.R. § 112.7(a)(3). The 500-gallon oil storage cube containing new motor oil, and the three 500-gallon tanks containing motor oil and located in the garage were missing from the diagram.

b. The SPCC Plan does not contain a complete discussions of the type of oil stored in each fixed container, as required by 40 C.F.R. § 112.7(a)(3)(i).

c. The SPCC Plan does not contain specific information and procedures that would enable Facility personnel reporting a discharge to relate specific information, as required by 40 C.F.R. § 112.7(a)(4). The spill notification form did not have space to fill in the quantity of oil discharged reaching navigable waters, the cause of the discharge, the source of the discharge, and actions taken to respond to the discharge.

d. The SPCC Plan does not contain information evidencing adequate secondary containment, as required by 40 C.F.R. § 112.7(c).

e. The SPCC Plan does not contain written procedures for tests and inspections, and records of tests or inspections for all of the tanks and containers were not kept with the SPCC Plan, as required by 40 C.F.R. § 112.7(e). At the time of the SPCC Inspection, Respondent could not produce inspection records for the following tanks and containers that stored oil: tank 014A, which is a 10,000-gallon diesel fuel tank, or for the 300-gallon cube and numerous 325-gallon IBCs.

f. The SPCC Plan states that Respondent will retain training records for a period of 3 years, as required by 40 C.F.R. § 112.7(f). At the time of the SPCC Inspection, Respondent could not produce 3 years of training records.

g. The SPCC Plan does not discuss the diesel fuel loading/unloading area, whether the Facility provides an interlocking warning system or whether the lowermost

drain of the truck is inspected prior to departure, as required by 40 C.F.R. § 112.7(h).

143. During the SPCC Inspection, Respondent was unable to produce records of drainage events, as required by 40 C.F.R. § 112.8(c). Upon information and belief, on occasion, Respondent would open the Retention Basin valve to drain stormwater.

144. From April 2014 to the present, Respondent violated 40 C.F.R. § 112.3(a) by failing to prepare an adequate SPCC Plan for the Facility that complies with the requirements of 40 C.F.R. §§ 112.7 and 112.8.

COUNT XII - FAILURE TO PROVIDE ADEQUATE SECONDARY CONTAINMENT

145. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

146. 40 C.F.R. § 112.3(a) requires the owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in [40 C.F.R. Part 110], into or upon the navigable waters of the United States or adjoining shorelines, to implement an SPCC Plan in accordance with 40 C.F.R. § 112.7 and any other applicable provision of 40 C.F.R. Part 112.

147. 40 C.F.R. § 112.7(c) requires Respondent to "[p]rovide appropriate containment and/or diversionary structures or equipment to prevent a discharge . . . The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs."

148. At the time of EPA's SPCC Inspection of the Facility on May 20, 2015, Respondent was storing approximately 30,000 gallons of oil in 55-gallon drums, in storage Outdoor Area #1.

149. At the time of EPA's SPCC Inspection of the Facility on May 20, 2015, Respondent was storing approximately 80,000 gallons of oil in 55-gallon drums, in storage Outdoor Area #2.

150. At the time of EPA's SPCC Inspection of the Facility on May 20, 2015, Respondent did not have diked areas for Outdoor Storages Area #1 and #2.

151. At the time of EPA's SPCC Inspection of the Facility on May 20, 2015, the topography at the Facility would cause any materials spilled in Outdoor Storage Areas #1 or #2 to flow towards catch basins around the Facility, and then to Retention Basin #1.

152. In Respondent's SPCC Plan, the Professional Engineer who prepared the Plan performed calculations estimating the volume of a potential spill from the largest oil container plus precipitation. He explained, "A sloped triangular shaped containment berm for this volume of

water would be 2.86 feet at the highest point. . . . The actual maximum height is approximately 0.5 feet. The consequence of this is during a simultaneous large rain event and spill event, oil would escape the bermed area."

153. From 1991 to the present, Respondent violated 40 C.F.R. 112.3(a), by failing to provide adequate secondary containment for oil stored at the Facility, as required by 40 C.F.R. § 112.7(c).

PROPOSED PENALTY

154. Pursuant to Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. § 6982(a)(3) and (g), any person who violates any requirements of Subtitle C of RCRA, 42 U.S.C. §§ 6982, shall be liable to the United States for civil penalty in an amount not to exceed $25,000 per day of noncompliance. The Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, increased the maximum amount of civil penalties which can be assessed by EPA for each day of a violation of RCRA Subtitle C occurring on or after January 30, 1997, and on or before March 15, 2004, from $25,000 to $27,000, after March 15, 2004, and or before January 12, 2009, to $32,500, after January 12, 2009, to $37,500. Civil penalties under Section 3008 of RCRA may be assessed by administrative order.

155. Pursuant to Section 311(b)(6)(B)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), any person who violates any requirements of Section 311 of CWA, 33 U.S.C. § 1321, shall be liable to the United States for a Class II civil penalty in an amount not to exceed $10,000 per day for each such violation, except that the maximum amount of any Class II penalty shall not exceed $125,000. Each day a violation continues under Section 311(j) of the CWA, 42 U.S.C. § 1321(j), constitutes a separate violation. The Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, increased the maximum amount of civil penalties which can be assessed by EPA for each day of a violation for a Class II civil penalty occurring on or after January 30, 1997, and on or before January 12, 2009, to $11,000, and after January 12, 2009, to an amount not to exceed $16,000 per day for each such violation. The Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, also increased the maximum amount of any Class II penalty as follows: for violations occurring on or after January 30, 1997, and on or before March 15, 2004, to $137,500; for violations occurring after March 15, 2004, and on or before January 12, 2009, to $157,500; for violations occurring after January 12, 2009 and on or before December 6, 2013, to $177,500; and for violations occurring after December 6, 2013, to $187,500. Civil penalties under Section 311 of the CWA may be assessed by administrative order.

156. On the basis of the violations described above, Complainant has determined that Respondent is subject to civil penalties under RCRA Section 3008, 42 U.S.C. § 6982, and Section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B). Accordingly, Complainant proposes to assess penalties based on the considerations described below.

157. Complainant will consider, among other factors, Respondent's inability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with the Respondent.

158. In addition, to the extent that the facts and circumstances unknown to Complainant at the time of the issuance of the Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for increasing or decreasing the civil penalty, as appropriate.

159. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. *See* 40 C.F.R. § 22.19(a)(4). Instead, an explanation of the number and severity of violations is given below concerning the aforesaid Counts alleged in this Complaint.

RCRA Penalties:

For the purpose of determining the amount of a civil penalty to be assessed under RCRA, Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), requires EPA to take into account the seriousness of the violation and any good faith efforts by each Respondent to comply with applicable requirements (i.e., the "statutory factors"). In developing a civil penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the aforementioned statutory factors and EPA's June 2003 "RCRA Civil Penalty Policy" ("RCRA Penalty Policy"), a copy of which is enclosed with this Complaint (Enclosure B). This RCRA Penalty Policy provides a rational, consistent and equitable methodology for applying the statutory factors enumerated above to particular cases. Based on the foregoing allegations, and pursuant to the authority of Section 3008(a)(1) and (3) and (g) of RCRA, 42 U.S.C. § 6928(a)(1) and (3), and (g), Complainant proposes the assessment a civil penalty against Respondent per day of non-compliance for each violation.

COUNT I: Operation of a TSD without a permit

Potential for Harm: The potential for harm arising from Respondent's storage of hazardous waste without a permit is "moderate." Respondent's failure to comply with the permitting requirements of RCRA and the authorized PaHWR constitutes a moderate potential for harm to human health, the environment and the RCRA program. The permitting process is the backbone of the RCRA program and ensures that facilities that manage hazardous wastes handle them in a manner so as to minimize their risk to human health and the environment. Failure to obtain a permit or interim status prior to the treatment, storage and/or disposal of hazardous waste is evidence indicating that a facility is not instituting those practices and procedures required by RCRA for the safe management and handling of these wastes, thereby, posing a risk to human health and the environment. Failure to obtain a permit and interim status also impedes EPA's ability to regulate hazardous waste activities by members of the regulated community, like Respondent, due to the fact that the RCRA regulatory program and Complainant rely upon the self-reporting of members of the regulated community.

Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its activities is "moderate." Respondent met some, but not many, of the conditions it needed to meet in order to be exempt from permitting requirements.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count I, Complainant shall also seek assessment of a penalty that takes into account the economic benefit

of non-compliance gained by Respondent as a result of its failure to obtain a permit or interim status prior to storing hazardous waste at the Facility.

COUNT II: Failure to make a hazardous waste determination

Potential for Harm: The potential for harm posed by the violation is "moderate." The performance of hazardous waste determinations is the initial trigger for the implementation of the RCRA regulations and the authorized state regulations at a facility for the safe handling and management of hazardous wastes. Respondent's failure to perform such determinations in connection with the spills that occurred and contents of the Shop-Vac resulted in hazardous wastes not being identified as such and potentially not being properly managed and handled at the Facility, thereby posing a significant risk to human health and the environment.

Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its activities is "moderate." Respondent made determinations for other wastes at the Facility. The spills and Shop-Vac waste comprise a small part of the total waste streams generated at the Facility.

Economic Benefit of Non-Compliance: In addition to a gravity-based penalty for Count III, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to make hazardous waste determinations on several hazardous wastes at the Facility.

COUNT III: Failure to provide initial and refresher hazardous waste management training

Potential for Harm: The potential for harm posed by the violation is "moderate." It is crucial to the effective implementation of the requirements of RCRA that those who handle hazardous wastes as a part of their jobs be aware of those requirements. Without knowledge of the regulations governing the handling of hazardous wastes, employees are more likely to handle the wastes in a way that does not comport with the regulations, leading to a potential release and risk to human health and environmental receptors. Although it did not provide and document formal training, Respondent appears to have provided some undocumented on-the-job training to employees. The penalty will take into consideration that Respondent failed to provide this training to approximately 13 employees, for a period of 5 years.

Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its activities is "moderate." Respondent appears to have provided some undocumented on-the-job training to employees.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count IV, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to provide initial and refresher RCRA training to personnel responsible for hazardous waste management at the Facility.

COUNT IV: Failure to maintain training and personnel records

Potential for Harm: The potential for harm posed by the violation is "moderate." Respondent did not have training records. Respondent's PPC Plan, dated October 2012, had some job descriptions, but not descriptions for all personnel in positions where they participate in hazardous waste management. A lack of formal descriptions for all personnel in positions that require hazardous waste management, and a lack of training, means that handling of wastes may be delegated to people without formal hazardous waste management training. Handling of hazardous waste by untrained employees poses a significant risk to the health of those employees, to members of the community, and to the environment.

Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its activities is "moderate." Respondent's PPC Plan included some job descriptions, but not descriptions for all personnel in positions that participate in hazardous waste management.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count V, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to maintain training and personnel records.

COUNT V: Failure to conduct and document daily inspections of hazardous waste tank

Potential for Harm: The potential for harm posed by this violation is "major." A failure to regularly inspect the two Accumulation Tanks, which store hazardous waste, means that a leak could occur and go undiscovered. Undiscovered leaks have a greater potential to go unmitigated and migrate to soil, posing significant risk to human health and environmental receptors. When EPA inspectors performed the RCRA Inspection at the Facility, they observed several spills that had gone undetected by Facility personnel.

Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its lack of daily inspections is "moderate." Respondent's staff fills the Accumulation Tanks by hand on a somewhat regular basis, and employees occasionally observe the tank. However, such casual observations fail to satisfy the "each operating day" requirement of the regulation and fail to create the written record that the regulations require.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count VI, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to conduct and document daily inspections of the hazardous waste Accumulation Tanks.

COUNT VI: Failure to adequate have secondary containment for hazardous waste tanks

Potential for Harm: The potential for harm posed by the violation is "major." The failure to properly manage a tank being utilized for hazardous waste can result in a release to the environment and presents a risk to human health and environmental receptors. Respondent has stated that spills would flow to vaults below grade at the Facility. One of these nearby vaults is

the space beneath the truck scale. This vault may contains electrical components, and would not be an appropriate place to contain the flammable volatile organics stored in the Accumulation Tanks.

Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its activities is "moderate." Respondent has states that spills would flow to vaults below grade at the Facility. Respondent has not shown that there is grading or structures in place that would direct spills from an Accumulation Tank to a nearby vault. The topography at the Facility does not appear to direct spills from the Accumulation Tanks towards the drain leading to the vault. The vaults do not appear to be lined or constructed of appropriate material to contain a spill from an Accumulation Tanks.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count VIII, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to provide the hazardous waste Accumulation Tanks with adequate secondary containment.

COUNT VII: Failure to provide hazardous waste tanks with leak detection

Potential for Harm: The potential for harm posed by the violation is "moderate." Respondent's staff reported that the Accumulation Tanks had no devices for leak detection. A leaking tank can result in a release to the environment and harm to human health and environmental receptors.

Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its activities is "moderate." Respondent's staff appears to have filled the Accumulation Tanks by hand on a somewhat regular basis, and would at times observe the Tanks.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count VII, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to provide the hazardous waste Accumulation Tanks with leak detection devices.

COUNT VIII: Failure to have Professional Engineer's certification for hazardous waste tanks

Potential for Harm: The potential for harm posed by the violation is "moderate." Respondent failed to obtain and keep on file at the Facility written statements by a Professional Engineer, attesting the Accumulation Tank systems were properly designed, installed and repaired as needed. The failure of a tank being used to store hazardous waste can result in a release to the environment and presents a risk to human health and environmental receptors..

Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its activities is "moderate." Respondent provided the welder's quality documents; however, this submission falls far short of meeting the regulatory requirement.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count IX, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to obtain and maintain a Professional Engineer's certification for the hazardous waste Accumulation Tanks.

COUNT IX: Failure to provide air emissions controls

Potential for Harm: The potential for harm by not providing appropriate air emission control devices on hazardous waste Accumulation Tank 2 is "major." At the time of the RCRA Inspection, each Accumulation Tank had a large square funnel (approximately 1' x 1') that was open to the atmosphere, through which volatiles could escape. There was no attempt to comply with the Subpart CC requirement to maintain air emission equipment and structural controls, inspect such equipment and document all inspections, and therefore other important regulatory requirements were also violated as a result. Respondent's failure in this regard had the potential to release VOCs into the atmosphere. Any release of VOCs to the atmosphere, resulting from a lack of controls, presents a substantial potential from harm both to human health and the environment. VOCs are a suspected carcinogen, can pose a risk of fire and are implicated in the deterioration of the atmospheric ozone. Volatiles escaping these Tanks not only impact workers at the Facility, but also the entire Reading community.

Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its activities is "major," because Respondent completely failed to comply with this requirement. As described above, each Accumulation Tank had a funnel that was open to the atmosphere, through which volatiles could escape. When asked, Facility staff reported that they had no knowledge of the Subpart CC requirements.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count X, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to provide air emission equipment and structural controls, inspect such equipment and document all inspections.

COUNT X: Failure to manage Universal Waste Lamps

Potential for Harm: The potential for harm is "moderate." Open containers and loose lamps lead to an increased possibility of breakage of a lamp. Breakage of a lamp could release mercury into the environment, presenting a risk to humans, including employees working at the Facility, as well as ecological receptors.

Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its activities is "major." Respondent deviated from the requirement by having two boxes containing lamps, which were not labeled with the required phrases or accumulation dates, and one of these boxes was open. Respondent also had two lamps that were not in boxes. The deviation is moderate because there were a small number of lamps and Respondent had most of the lamps in boxes.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count XI, Complainant may also seek assessment of a penalty that takes into account the economic benefit

of non-compliance gained by Respondent as a result of its failure to containerize universal waste lamps, and seal, label and date the boxes. This cost will likely be minimal.

SPCC Penalties

For the purpose of determining the amount of a civil penalty to be assessed under Section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), requires EPA to take into account the seriousness of the violations, the economic benefit to the violator, if any, resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the economic impact of the penalty on the violator, and any other matters as justice may require, as well as EPA's "Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act," dated August 1998 ("SPCC Penalty Policy"), a copy of which is enclosed as Enclosure C. This SPCC Penalty Policy provides a rational, consistent, and equitable methodology for applying the statutory factors enumerated above to specific cases. Based on the foregoing allegations, and pursuant to the authority of Section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), Complainant proposes the assessment a civil penalty against Respondent per day of non-compliance for each violation.

COUNT XI: Failure to have a timely and adequate SPCC Plan

Seriousness: Failure to develop and implement an adequate SPCC Plan are serious violations. Although the SPCC requirements became effective in 1974, it was not until 2013 that Respondent attempted to comply with the spill prevention requirements. Preparation and implementation of an SPCC Plan is critical to fulfilling the regulatory requirements. Failing to have a Plan or failing to have an adequate Plan reflects inadequate consideration of and implementation of spill prevention measures. Pursuant to the SPCC Penalty Policy, where violations essentially undermine the ability of the respondent to prevent a worst case spill, the violation is considered to be "major noncompliance." No SPCC Plan and inadequate SPCC Plan are specific examples of major noncompliance in the SPCC Penalty Policy.

Culpability: The penalty for this violation should reflect an increase for Respondent's culpability. Respondent is in the business of storing chemicals and oils, and stored oil from 1991 until 2013 without having an SPCC Plan. Even after Respondent hired an Engineer to prepare an SPCC Plan for the Facility, Respondent operated with an inadequate SPCC Plan for two additional years. Some of the inadequacies in the Plan were noted by the Professional Engineer who prepared the Plan, but were not corrected by Respondent, as more fully described below.

History of Violations: EPA has not taken any formal enforcement action against the Respondent for SPCC or spill-related violations at the Facility within the past five years that merits increasing the penalty for past violations.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count XII, Complainant shall also seek assessment of a penalty that takes into account the economic benefit

of non-compliance gained by Respondent as a result of its failure to develop and implement an adequate SPCC Plan.

COUNT XII: Failure to have adequate secondary containment for two outdoor oil areas
Seriousness: Failing to have adequate secondary containment is a very serious violation, and is designated as "major noncompliance" in the SPCC Penalty Policy. Failing to provide adequate secondary containment here could result in discharges of oil to the Schuylkill River, and environmental harm to both human and environmental receptors downstream.

Culpability: The penalty for this violation should reflect an increase for Respondent's culpability. In the SPCC Plan, the Professional Engineer who prepared the Plan advised Respondent that the Facility did not have adequate secondary containment for the two outdoor oil storage areas. Nevertheless, Respondent ignored the advice of its Engineer, and chose not to expand the berm that would be used to provide secondary containment.

History of Violations: EPA has not taken any formal enforcement action against the Respondent for SPCC or spill-related violations at the Facility within the past five years that merits increasing the penalty for past violations.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count XIII, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to provide adequate secondary containment for two outdoor oil areas, and failure to have drainage records.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

160. Respondent may request, within 30 days of receipt of this Complaint, a hearing before an EPA Administrative Law Judge on the Complaint. At such hearing, Respondent may contest any material fact and the appropriateness of any penalty amount. To request a hearing, Respondent must file a written answer ("Answer") within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) a statement of the facts which constitute the grounds of a defense; (2) a concise statement of the facts which Respondent intends to place at issue in any hearing; and (3) a statement of whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered to be admitted.

161. If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to file an Answer shall result in the filing of a Motion

for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

162. Any hearing requested by Respondent will be conducted in accordance with EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22, (hereinafter "Consolidated Rules"), a copy of which is enclosed. Respondent must send any Answer and request for a hearing to:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

SETTLEMENT CONFERENCE

163. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case and to attempt to arrive at a settlement. To request an informal settlement conference, please contact Natalie Katz (3RC30), Senior Assistant Regional Counsel, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, telephone (215) 814-2615.

164. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and request for hearing must be submitted as set forth above. The informal settlement conference procedure, however, may be pursued simultaneously with the adjudicatory hearing procedure.

165. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement in an informal conference. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee, the Regional Judicial Officer. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

166. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Land and Chemicals Division, the Region III Hazardous Site Cleanup Division, and the Region III Office of Enforcement, Compliance and Environmental Justice. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an ex parte communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules, 40 C.F.R. Part 22, prohibit any unilateral discussion or ex parte communication of the merits of a case with the

Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer, after issuance of a Complaint.

Dated: 9/30/2015

Samantha Phillips Beers, Director
Office of Enforcement, Compliance and
Environmental Justice