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

SEP 30 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Checkpoint Caribbean, Ltd.
P.O. Box 7283
Ponce, Puerto Rico 00732-7283

RE: In the Matter of Checkpoint Caribbean, Ltd.
Docket No. CAA-02-2007-1227

Dear Sir or Madam,

Enclosed please find an Administrative Complaint ("Complaint") that the United States Environmental Protection Agency ("EPA") has filed against Checkpoint Caribbean, Ltd. ("Respondent") under the authority of Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), regarding compliance with the risk management program requirements.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within ***thirty (30)*** days of your receipt of the enclosed Complaint to the Environmental Protection Agency's ("EPA") Regional Hearing Clerk at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of

settlement and to have an informal conference with EPA. However, a request for an informal conference ***does not*** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

In addition to the Complaint, enclosed is a copy of the "Combined Enforcement Policy for CAA Section 112(r) Risk Management Program," dated August 15, 2001 ("Section 112(r) Penalty Policy"). Also enclosed is a copy of the "Consolidated Rules of Practice," which govern this proceeding. For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney for this case, Elizabeth Leilani Davis, at (212) 637-3249, or at her address, as listed in the Complaint.

Sincerely yours,

Ray Basso
Strategic Integration Manager
Emergency and Remedial Response Division

Enclosures

cc: Karen Maples, Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:	)	Docket No. CAA-02-2009-1227
Checkpoint Caribbean, Ltd. Sabonetas Industrial Park Lot 2B, Street #1 Ponce, Puerto Rico 00732	)	Administrative Complaint under Section 113 of the Clean Air Act, 42 U.S.C. § 7413
Respondent.	)	

ADMINISTRATIVE COMPLAINT

I. JURISDICTION

1. This Complaint ("Complaint") initiates an administrative action for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d). The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency ("EPA"), Region 2, who has been delegated the authority to institute this action.

2. EPA and the U.S. Department of Justice have determined, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this matter through administrative enforcement action.

II. APPLICABLE STATUTES AND REGULATIONS

3. Section 113(d) of the Act, 42 U.S.C. § 7413(d), provides for the assessment of penalties for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

4. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances. EPA promulgated regulations in 40 C.F.R. Part 68 to implement Section 112(r)(7) of the Act, which set forth the requirements of risk management programs that must be established and implemented at affected stationary sources. The regulations at 40 C.F.R. Part 68, Subparts A through G, require owners and operators of stationary sources to, among other things, develop and implement: (1) a management system to oversee the implementation of the risk management program elements; and (2) a risk management program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program. Pursuant to 40 C.F.R. Part 68, Subparts A and G, the risk management program for a stationary source that is subject to these requirements is to be described in a risk management plan ("RMP") that must be submitted to EPA.

5. Sections 112(r)(3) and (5) of the Act, 42 U.S.C. §§ 7412(r)(3) and (5), require the Administrator to promulgate a list of regulated substances, with threshold quantities. EPA promulgated a regulation known as the List Rule, at 40 C.F.R. Part 68, Subpart F, which lists the regulated substances and their threshold quantities.

6. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. §7412(r)(7), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. Part 68 (including, but not limited to, submission of an RMP to EPA), no later than June 21, 1999, or three years after the date on which such regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which the regulated substance is first present in a process above the threshold quantity, whichever is latest.

7. The regulations set forth at 40 C.F.R. Part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. A covered process is subject to Program 3 requirements, as per 40 C.F.R. § 68.10(d), if the process: a) does not meet one or more of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b); and b) if either one of the following conditions is met: the process is listed in one of the specific North American Industry Classification System ("NAICS") codes found at 40 C.F.R. § 68.10(d)(1) or the process is subject to the United States Occupational Safety and Health Administration ("OSHA") process safety management ("PSM") standard set forth in 29 C.F.R. § 1910.119. As required by 40 C.F.R. § 68.10(c), a facility must register its RMP-covered process as a Program 2 process if it does not meet the requirements of either Program 1 or Program 3.

8. The regulations set forth at 40 C.F.R. § 68.12(d) require that the owner or operator of a stationary source with a Program 3 process undertake certain tasks, including, but not limited to, development and implementation of a management system (pursuant to 40 C.F.R. § 68.15), the implementation of prevention program requirements, which include mechanical integrity (pursuant to 40 C.F.R. §§ 68.65-68.87), the development and implementation of an emergency response program (pursuant to 40 C.F.R. §§ 68.90-68.95), and the submission of additional information on prevention program elements regarding Program 3 processes (pursuant to 40 C.F.R. § 68.175).

III. DEFINITIONS

9. 40 C.F.R. § 68.3 defines "stationary source," in relevant part, as "any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur."

10. 40 C.F.R. § 68.3 defines "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, as amended, listed in 40 C.F.R. § 68.130, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

11. 40 C.F.R. § 68.3 defines "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the Act and set forth in 40 C.F.R. § 68.130.

12. 40 C.F.R. § 68.3 defines "process," in relevant part, as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

13. 40 C.F.R. § 68.3 defines "covered process" as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

IV. FINDINGS OF VIOLATIONS

14. Checkpoint Caribbean, Ltd. ("Respondent") is, and at all times referred to herein was, a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. Respondent is the owner and/or operator of a facility located in Sabonetas Industrial Park, Lot 2B, Street #1, Ponce, Puerto Rico 00732, hereinafter referred to as the "Facility". The Facility is located in an industrial park situated in a commercial and residential area. A recreational park, which is owned by Respondent, is located immediately to the north of the chlorine cylinder storage area of the Facility.

16. The Facility is a "stationary source" as that term is defined at 40 C.F.R. § 68.3.

17. Chlorine is a regulated substance as that term is defined in 40 C.F.R. § 68.3.

18. The threshold quantity for chlorine (CAS #7782-50-5) is listed in 40 C.F.R. § 68.130 as 2,500 pounds.

19. Respondent uses chlorine in a process at its Facility in amounts exceeding the threshold quantity (hereinafter, the "Process").

20. On or about January 15, 2008, Respondent submitted to EPA an RMP for the Facility. The RMP specified that Respondent's process at the Facility contained 30,000 pounds of chlorine. The RMP also incorrectly identified the Facility's Process as a Program 2 process.

21. On or about March 13, 2008, EPA conducted an inspection at the Facility to determine compliance with Section 112(r) of the Act and the applicable regulations including those listed in 40 C.F.R. Part 68. During the inspection, Facility representatives informed EPA that chlorine has been used on site in the Process for approximately twenty (20) years.

22. By letter dated November 4, 2008, EPA informed Respondent of the results of the Facility inspection. Respondent replied by letter dated November 24, 2008, acknowledging that the Facility's Process was a Program 3 process.

COUNT I

23. The allegations set forth in paragraphs 1 through 23, above, are incorporated herein by reference.

24. According to information obtained during the EPA inspection, Respondent should have developed and implemented a risk management program at the Facility and submitted an RMP to EPA earlier than January 15, 2008, pursuant to the requirements of 40 C.F.R. §§ 68.10(a), 68.12, and 68.150.

25. According to information obtained by EPA, including information obtained during the EPA inspection, the chlorine process at the Facility is subject to the OSHA PSM standard, 29 C.F.R. § 1910.119.

26. According to information obtained by EPA, including information obtained during the inspection, the chlorine process at the Facility is not eligible for Program 1 because it does not meet the requirements set forth in 40 C.F.R. § 68.10(b). The Process at the Facility does not meet the requirements for Program 2 because the Facility is subject to the OSHA PSM standard set forth in 29 C.F.R. § 1910.119. Because the covered process is not eligible for Program 1 and is subject to the OSHA PSM standard, the Facility should have registered as Program 3 in its initial RMP submission, as required by 40 C.F.R. § 68.160(b)(7), and complied with the requirements of 40 C.F.R. § 68.12(d).

27. On or about December 24, 2008, Respondent submitted to EPA an updated RMP for the Facility, which identified the chlorine process as a Program 3 process.

28. According to information obtained by EPA during the inspection, Respondent did not develop a management system to oversee the implementation of the risk management program elements in accordance with the requirements by 40 C.F.R. § 68.15.

29. According to information obtained during the EPA inspection, Respondent did not have written process safety information pertaining to the technology of the process required by 40 C.F.R. § 68.65(c), including safe upper and lower limits for key operating parameters, such as pressure, and an evaluation of the consequences of deviations from the safe operating limits.

30. According to information obtained during the EPA inspection, Respondent did not have written process safety information pertaining to the equipment in the process required by 40 C.F.R. § 68.65(d)(1), including: materials of construction; piping and instrumentation diagrams; electrical classification; relief system design and design basis; ventilation system design information; design codes and standards employed; and safety systems.

31. According to information obtained during the EPA inspection, Respondent failed to document that the chlorine process equipment at the Facility complies with recognized and generally accepted good engineering practices in accordance with 40 C.F.R. § 68.65(d)(2), in that, among other things: Respondent failed to document that the chlorine cylinder storage room contained an adequate number of chlorine detectors, and Respondent failed to have alarms or other indications of potential chlorine leaks at the entrance to the chlorine cylinder storage rooms to provide warning prior to employees entering the room, as the chlorine detectors are set to sound an alarm only at the guardhouse and main control room.

32. According to information obtained during the EPA inspection, Respondent did not perform a process hazard analysis for the chlorine process, as required by 40 C.F.R. § 68.67(a).

33. According to information obtained during the EPA inspection, Respondent failed to develop and implement written operating procedures for all activities involved in the chlorine process, as required by 40 C.F.R. § 68.69(a).

34. According to information obtained during the EPA inspection, Respondent failed to certify annually that its written operating procedures for the activities involved in the chlorine process were current and accurate pursuant to the requirements of 40 C.F.R. § 68.69(c).

35. According to information obtained during the EPA inspection, Respondent failed to document that each employee involved in operating a covered process has received training pursuant to the requirements of 40 C.F.R. § 68.71(c).

36. According to information obtained during the EPA inspection, Respondent failed to perform inspections and tests on all equipment used in the chlorine process, including chlorine transfer lines and valves, receiving and feed tanks, and chlorinators, as required by 40 C.F.R. § 68.73(d)(1).

37. According to information obtained during the EPA inspection, Respondent failed to establish and implement written procedures to manage changes pursuant to the requirements of 40 C.F.R. § 68.75.

38. According to information obtained during the EPA inspection, Respondent failed to conduct compliance audits in compliance with the requirements of 40 C.F.R. § 68.79(a).

39. According to information obtained during the EPA inspection, Respondent failed to develop a written plan of action regarding the implementation of the employee participation required pursuant to 40 C.F.R.§ 68.83.

40. Respondent's failures to comply with the requirements of 40 C.F.R. Part 68 as described above constitute violations of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). Respondent is therefore subject to the assessment of penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

V. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), as modified pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340 (December 11, 2008), which was mandated by the Debt Collection Improvement Act of 1996 and 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, EPA is authorized to assess civil penalties not to exceed $32,500 per day for each violation of Section 112 of the Act, 42 U.S.C. § 7412, that occurred that occurred after March 15, 2004 through January 12, 2009, and $37,500 per day for each violation of Section 112 of the Act that occurred after January 12, 2009. This amount is

subject to revision under federal law and regulation. Civil penalties under Section 113 of the Act may be assessed by Administrative Order. On the basis of the violations of the Act described above, Complainant alleges that Respondent is subject to penalties for violating Section 112(r) of the Act, 42 U.S.C. § 7412(r).

The proposed civil penalty in this matter has been determined in accordance with the "Combined Enforcement Policy for CAA Section 112(r) Risk Management Program," dated August 15, 2001 ("Section 112(r) Penalty Policy"), and the December 29, 2008 memorandum entitled "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)," from Granta Y. Nakayama, Assistant Administrator, Office of Enforcement and Compliance Assurance, to the Regional Administrators. A copy of the Section 112(r) Penalty Policy accompanies this Complaint. A Penalty Calculation Worksheet which shows how the proposed penalty was calculated is included as Attachment 1.

In determining the amount of any penalty to be assessed, Section 113(e) of the Act, 42 U.S.C. § 7413(e), requires EPA to take into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violations.

In accordance with Section 113(d) of the Act, 40 C.F.R. Part 19, and the Section 112(r) Penalty Policy, and based on the facts alleged in this Complaint, Complainant proposes to assess a civil penalty of $114,900 against Respondent.

Payment of a civil penalty shall not affect Respondent's ongoing obligation to comply with the Act and other applicable federal, state, or local laws.

The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business. Respondent may submit appropriate documentation to rebut this presumption.

VI. PROCEDURES GOVERNING THIS ADMINISTRATIVE PROCEEDING

The rules of procedure governing this civil administrative litigation are entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS" (hereinafter, the "Consolidated Rules"), and are codified at 40 C.F.R. Part 22. A copy of the Consolidated Rules accompanies this Complaint.

A. Notice of Opportunity to Request a Hearing and Answering The Complaint

To request a hearing, Respondent must file an Answer to the Complaint, pursuant to 40 C.F.R. §§ 22.15(a) - (c). Pursuant to 40 C.F.R. § 22.15(a), such Answer must be filed within 30 days after service of the Complaint. An Answer is also to be filed, pursuant to 40 C.F.R. § 22.15(a), if

Respondent contests any material fact upon which the Complaint is based, contends that the proposed penalty is inappropriate, or contends that Respondent is entitled to judgment as a matter of law. If filing an Answer, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. See 40 C.F.R. § 22.15(a). Complainant's copy of Respondent's Answer, as well as a copy of all other documents that Respondent files in this action, shall be sent to:

Elizabeth Leilani Davis
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007
Phone: (212) 637-3249

Pursuant to 40 C.F.R. § 22.15(b), Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where Respondent lacks knowledge of a particular factual allegation and so states that in its Answer, the allegation is deemed denied, pursuant to 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether Respondent requests a hearing.

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation, pursuant to 40 C.F.R. § 22.15(d).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

B. Failure To Answer

If Respondent fails to file a timely answer to the Complaint, EPA may file a Motion for Default pursuant to 40 C.F.R. §§ 22.17(a) and (b), which may result in the issuance of a default order assessing the proposed penalty pursuant to 40 C.F.R. § 22.17(c). If a default order is issued, any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final. If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

VII. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions and objectives of the Act and the applicable regulations. See 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondent's ability to continue in business; and/or (4) any other special facts or circumstances Respondent wishes to raise. Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA Assistant Regional Counsel identified in Section VI.A., above.

Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing pursuant to 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction will be made simply because an informal settlement conference is held.

In the event settlement is reached, its terms shall be recorded in a written consent agreement signed by the parties and incorporated into a final order, pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). Respondent's entering into a settlement through the signing of such consent agreement and its complying with the terms and conditions set forth in such consent agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in this

Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy, or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address provided in Section VI.A., above), a copy of the check or other instrument of payment, as provided in 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified in Section VI.A., above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following addressee:

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

The check must be identified with a notation of the name and docket number of this case, which is set forth in the caption on the first page of this Complaint. Pursuant to 40 C.F.R. § 22.18(a)(3), upon EPA's receipt of such payment, a final order shall be issued. Furthermore, as provided in 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations made in the Complaint and to appeal such a final order. Such payment does not extinguish, waive, satisfy, or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: Sept. 30, , 2009

Walter Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

TO: Checkpoint Caribbean Ltd.
P.O. Box 7283
Ponce, Puerto Rico 00732-7283

Attachment

cc: Karen Maples, Region 2 Hearing Clerk

ATTACHMENT 1

Ellen Banner, Environmental Scientist/OSC, Response and Prevention Branch
September 30, 2009

Facility Name/Address: Checkpoint Caribbean, Ltd. Facility, Sabonetas Industrial Park, Lot 2B, Street #1, Ponce, Puerto Rico 00732.
Violations: Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and the regulations at 40 C.F.R. Part 68 (failure to comply with risk management program requirements)

Penalty Calculation Worksheet

The total penalty was calculated by adding the economic benefit of noncompliance plus an amount that reflects the gravity of the violation.

1. Economic Benefit

"Economic benefit" is the financial gain that a violator accrues by delaying and/or avoiding the costs of compliance. In this case, EPA calculated the economic benefit to Checkpoint Caribbean, Ltd. ("Respondent") by examining the costs of the risk management program elements with which Respondent did not timely comply. EPA's BEN computer program (BEN ver. 4.2) was used to calculate the economic benefit that Respondent gained through noncompliance. The economic benefit component of the penalty was established at $26,200.

2. Gravity Component

a) Extent of deviation: Moderate

Respondent uses chlorine in a Program 3 process at its facility in Ponce, Puerto Rico (the "Facility"). On January 15, 2008, Respondent submitted to EPA its first Risk Management Plan ("RMP") for the Facility which incorrectly indicated that the chlorine process at Respondent's Facility was subject to Program 2 requirements. As described in the Complaint, the chlorine process is subject to Program 3 requirements.

On or about March 13, 2008, EPA conducted an inspection at the Facility to determine Respondent's compliance with Section 112(r) of the Clean Air Act and the applicable regulations set forth at 40 C.F.R. Part 68. The RMP specified that Respondent's chlorine process system at the Facility contained 30,000 pounds of chlorine. During the inspection, EPA discovered violations of the requirements of 40 C.F.R. Part 68 including, but not limited to, wrongly listing its process as Program 2, failure to establish and implement written procedures to manage change, failure to develop a process safety information report, the lack of a completed process hazard analysis, the lack of proper standard operating procedures, failure to document compliance audits every three years, and failure to develop and implement a written plan of action regarding the implementation of the employee participation.

Cumulatively, the violations have a significant effect on the ability of the Facility to prevent or respond to releases through the development and implementation of the RMP. The "extent of deviation" from the RMP requirements therefore is "Moderate" for purposes of EPA's August 15, 2001 Combined Enforcement Policy for Section 112(r) of the Clean Air Act ("Penalty Policy"). Because the Facility is a Program 3 facility, the applicable cell in Table I, the "Penalty Assessment Matrix," in the Penalty Policy is the "Moderate, Program 3" cell, corresponding to a penalty range of $50,000 to $12,001. After considering the circumstances surrounding the violation - such as the amount of chlorine, the toxicity of the pollutant, the potential harm to emergency personnel, the relative proximity of surrounding population, the potential effect of noncompliance on the community's ability to plan for chemical emergencies, and any actual problems first responders would face because of the Facility's non-compliance, a penalty of $30,000 was chosen.

b) Adjustment based on actual or potential environmental consequences:

Consistent with the Penalty Policy, the penalty was then adjusted upward to reflect the actual or potential environmental consequences of a potential worst-case release from the Facility. A "major impact" upward adjustment of 25% ($7,500) was selected, due to the effect that the release would have on nearby residents, the quantity of chlorine at the Facility over the threshold quantity, and the environment around the Facility. This adjustment raises the gravity-based penalty figure to $37,500.

c) Duration of violation:

The duration component was calculated from January 15, 2008, the date Respondent submitted an RMP, until February 6, 2009, the date an outside consultant completed the Facility's Process Hazard Analysis study, which is a duration of 13 months. Under the Penalty Policy, the "duration" component of the penalty for 13 months of noncompliance is $7,000. The duration component of $7,000 increases the penalty to $44,500.

d) Size of violator:

Consistent with the Penalty Policy, EPA scales the penalty to the "size of the violator" by calculating the violator's net worth. According to a recent Dun and Bradstreet report, Respondent's net worth for the year ending December 31, 2004, was $114,800,000. According to the Penalty Policy, if a company has a net worth over $100,000,001, the size adjustment to the penalty is $70,000 plus $25,000 for every additional $30,000,000. The size of violator component would add an additional $70,000, increasing the penalty to $114,500. However, because this amount would represent over 50% of the total penalty, as provided for in the Penalty Policy, EPA has elected to reduce the size of violator component to an amount equal to the rest of the penalty ($44,500). The size of violator component increases the penalty to $89,000.

e) Adjustment to Penalty for Inflation

In accordance with 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, and EPA's December 29, 2008 memorandum entitled "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)," to the Regional Administrators from Granta Y. Nakayama, Assistant Administrator, Office of Enforcement and Compliance Assurance, the gravity component has been multiplied by 1.1723, reflecting a 17.23% increase in civil monetary penalty amounts to account for inflation. This increases the penalty to $104,300.

3. Adjustments to Gravity Component

EPA considered all relevant factors as described below. There were no adjustments made for willfulness or negligence, history of noncompliance, environmental damage, or inability to pay. A reduction of the gravity component of approximately 15% was allowed due to Respondent's cooperation during EPA's pre-filing investigation. This adjustment results in a gravity-based penalty of $88,700.

The following Relevant Factors were considered:

Degree of Willfulness or Negligence
No upward adjustment for degree of willfulness or negligence.

Degree of Cooperation
Respondent has been cooperative during and after the inspection: Approximately 15% reduction

History of Noncompliance
No upward adjustment for history of noncompliance.

Environmental Damage
No upward adjustment for environmental damage.

Economic Impact of the Penalty (Ability to Pay)
No upward or downward adjustment for economic impact of the penalty (ability to pay).

TOTAL PENALTY (Economic Benefit + Gravity Component) $26,200 + 88,700 = $114,900