

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Safetech, Inc.
Santana Industrial Park,
Arecibo, Puerto Rico

Respondent

In a proceeding under Section 113(a) of
the Clean Air Act, 42 U.S.C. § 7413(a)

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

CAA-02-2015-1215

REGIONAL HEARING
CLERK

2015 OCT -2 AM 10:33

U.S. Environmental
Protection Agency-Reg 2

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) to Safetech, Inc. (Safetech or Respondent) for violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (CAA or the Act), 42 U.S.C. § 7413(d), Section 113(d) of the Act, and proposes the assessment of penalties in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The authority to find violations and issue Complaints has been delegated to the Director of the Caribbean Environmental Protection Division (CEPD) from the EPA Administrator through the Regional Administrator.

Section 113(d) of the Act authorizes EPA to bring an administrative penalty action in a matter involving a violation that occurred more than twelve months prior to the initiation of an action, and to seek an administrative penalty that exceeds the amount provided by statute, where the Administrator and the Attorney General jointly determine that such an action is appropriate. On September 28, 2015, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the time and penalty limitation provided in Section 113(d) of the Act.

In this Complaint, the Director finds that Respondent's facility, located at Santana Industrial Park, Arecibo, Puerto Rico, (the Facility), is subject to and in violation of the requirements or prohibitions of Section 111, 42 U.S.C. § 7671 of the Act, the Puerto Rico Regulations for the Control of Atmospheric Pollution (PRRCAP) and the Facility's Title V Operating Permit, which includes the Commercial Industrial Solid Waste Incineration requirements set forth under Rule 405(c) PRRCAP as applicable requirements.

Pursuant to Section 113(d) and (e) of the Act, the Clean Air Act Stationary Source Civil Penalty Policy, and the Debt Collection Improvement Act of 1996, EPA proposes a civil administrative penalty for those violations of \$431,848.

Statutory, Regulatory, and Permitting Background

Legal Background

EPA's Authority to Impose Civil Penalties for CAA Violations

1. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated

pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 112 and 114 of the Act.

2. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

3. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Caribbean Environmental Compliance Division, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands.

4. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Region 2 Regional Administrator the authority to execute CAA Section 113(d) Final Orders.

5. As contemplated by Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on September 28, 2015, DOJ granted EPA’s request for a waiver of the CAA Section 113(d) 12-month time and penalty limitation on EPA’s authority to initiate an administrative penalty action in this matter.

CAA Sections 111 and 114

6. Sections 111(d) and 129 of the Act require the Administrator to establish performance standards and other requirements, pursuant to Section 111, for each category of solid waste incineration unit, including emission limitations, monitoring, operator training and other requirements.

7. Section 114 of the Act authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 111 and 112 of the Act.

CISWI regulations

8. The Commercial Industrial Solid Waste Incineration (“CISWI”) Emission Guidelines (“EG”) under 40 C.F.R. Part 60, Subpart DDDD, establish emission and operating requirements under the authority of the CAA, Sections 111(d) and 129. These requirements must be incorporated into a State Plan that is “at least as protective” as the EG, and is federally enforceable upon approval by EPA.

9. On June 4, 2003, Puerto Rico adopted revisions to Rule 102 and Rule 405 of the PRRCAP, entitled ‘Definitions’ and ‘Incineration,’ respectively. Revised Rules 102 and 405 of the PRRCAP became effective on July 4, 2003, and are intended to control air emissions from existing CISWI Units located in Puerto Rico.¹

10. On April 12, 2004, EPA approved the Puerto Rico CISWI State Plan.

¹ Thus, the 2003 revisions to Rule 102 and 405 of the PRRCAP are the Puerto Rico CISWI State Plan enacted pursuant to Section 111(d) and 129 of the CAA. Rules 102 and 405 are part of the PRRCAP and are identified herein as such.

11. The Puerto Rico CISWI State Plan provides for the implementation and enforcement of the EG, as promulgated by EPA on December 1, 2000, applicable to existing CISWI Units for which construction commenced on or before November 30, 1999. Specifically, the State Plan adopted emission limits for organics, carbon monoxide (“CO”), metals, acid gases and particulate matter (“PM”) and compliance schedules for the existing CISWI Units located in Puerto Rico.

12. Rule 102 of the PRRCAP defines “CISWI Unit” as any combustion device that combusts commercial and industrial waste. The boundaries of a CISWI Unit are defined as, but not limited to, the commercial and industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash.

13. Rule 102 of the PRRCAP defines “commercial and industrial waste” as a solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial and industrial facility or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

14. Pursuant to Rule 405(c)(2)(A) of the PRRCAP, on the date that the initial performance test is completed or is required to be completed, whichever date comes first, the designated facility must meet the emission limitations specified in Table 1 of Rule 405(c) of the PRRCAP.

15. Pursuant to Rule 405(c)(2)(B) of the PRRCAP, if a wet scrubber is used to comply with the emission limitations, then operating limits must be established during the initial performance test for the operating parameters as specified in Table 2 of Rule 405(c).

16. Pursuant to Rules 405(c)(8)(A)(i) and (ii), if the owner or operator plans to achieve compliance more than one (1) year following the effective date of State Plan approval, the facility should meet the two (2) increments of progress: i) submit a final control plan and (ii) achieve final compliance.

17. Pursuant to Rules 405(c)(8)(C)(i) to (iii), the notification of achievement of increments of progress must include three (3) items: (i) notification that the increment of progress has been achieved, (ii) submission of any items required with each increment of progress, and (iii) signature of the owner or operator of the CISWI Unit.

18. Pursuant to Rule 405(c)(8)(E) of the PRRCAP, if the owner or operator fails to meet an increment of progress, he/she must submit a notification to the EPA and to the Puerto Rico Environmental Quality Board (EQB), postmarked within ten (10) business days after the date for that increment of progress as specified in Table 5 of Rule 405 of the PRRCAP. The owner or operator must inform the EPA and the EQB that he/she did not meet the increment, and must continue to submit reports each subsequent calendar month until the increment of progress is met.

19. Pursuant to Rule 405(c)(9)(A) of the PRRCAP, the owner or operator must conduct an initial performance test, as required under 40 C.F.R. § 60.8, to determine compliance with the emission limitations in Table 1 of Rule 405 and to establish operating limits using the procedures in Rule 405(c)(2)(B), Rule 405(c)(2)(C), and Rule 405(c)(2)(D), or Rule 405(c)(2)(E). The initial performance test must be conducted using the test methods listed in Table 1 of Rule 405 and the procedures in Rule 405(c)(5).

20. Pursuant to Rule 405(c)(9)(B), the initial performance test must be conducted no later than 180 days after the final compliance date. Final compliance date is specified in Table 5 of Rule 405 of the PRRCAP.

21. Pursuant to Rule 405(c)(10)(A) of the PRRCAP, the owner or operator must conduct an annual performance test for PM, hydrogen chloride (HCl), and opacity for each CISWI Unit, as required under 40 C.F.R. § 60.8, to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 1 of Rule 405 and the procedures in Rule 405(c)(5) of the PRRCAP.

22. Pursuant to Rule 405(c)(10)(D) of the PRRCAP, the owner or operator must conduct annual performance tests for PM, HCl, and opacity within twelve (12) months following the initial performance test. The owner or operator must conduct subsequent annual performance tests within twelve (12) months following the previous one.

Title V Operating Permit Requirements

23. On November 30, 2010, EQB issued Respondent a Title V Operating Permit, PFE-TV-4953-07-1003-0001.

24. Safetech's Title V Operating Permit incorporates by reference Rule 405(C) of the PRRCAP.

FINDINGS OF FACT

25. Safetech, Inc., is a corporation that owns and operates the Facility, a CISWI Unit located in Santana Industrial Park, Lot #30, Arecibo, Puerto Rico.

26. Safetech is a corporation that owns and operates the CISWI Unit located at Santana Industrial Park, Lot # 30, Arecibo, Puerto Rico (the "Facility").

27. The Facility was built on or before November 30, 1999.

28. The Facility, a source of air pollutant emissions subject to the regulatory requirements of the PRRCAP, is comprised of one (1) incinerator unit for non-hazardous commercial and industrial solid waste.

29. The incinerator unit was constructed in the year 1995 as a thermal oxidizer for biological wastes with the potential to burn hazardous waste.

30. The Facility's main air pollution control device is a water scrubber.

31. The Facility's maximum design waste burning capacity is one thousand pounds per hour (1000 lbs/hr).

32. On May 16, 2006, EPA conducted an inspection and compliance evaluation (the "2006 Inspection") of the Facility, in order to determine compliance with the CISWI requirements.

33. On January 18, 2007, and May 24, 2007, Safetech submitted the test protocol for the initial performance tests for PM, CO, Sulfur Dioxide (SO_x), Nitrogen Oxide (NO_x), dioxin/furans (D/F), cadmium (Cd), lead (Pb), mercury (Hg), HCl, and opacity.

34. On December 14, 2007, the EQB determined that the operator training program for CISWI incinerators submitted by Safetech on June 1, 2007, was incomplete and failed to address all regulatory requirements of Rule 405(c)(3)(C)(i) through Rule 405(c)(3)(C)(11) of the PRRCAP. Safetech submitted a revised operator training

program on February 6, 2008. To the best of EPA's knowledge this revised program has not been approved by EQB.

35. On May 21, 2008, Safetech submitted to EQB the results of the initial performance tests conducted from February 28 to March 19, 2008. The results showed that PM and Pb emissions were slightly above the limits set forth in Rule 405(c) of the PRRCAP. The emission limits for CO, SO_x, NO_x, D/F, Cd and Hg were met satisfactorily.

36. In January 2009, EQB informed EPA that the initial performance tests repeated by Safetech for PM showed results within the limits established under Rule 405 of the PRRCAP. However the tests for Pb failed again to meet the emission limits.

37. On July 2009, Safetech conducted again the tests for Pb and was finally able to meet the emission limits set forth under Rule 405 of the PRRCAP. These set of retests for PM and Pb were part of the emission tests requirements for the initial performance tests.

38. On May 5, 2011, EPA sent Safetech a Request for Information pursuant to Section 114 of the CAA requesting additional documentation, in order to determine Safetech's compliance status with the CISWI regulations.

39. On August 8, 2011, an EPA Enforcement Officer conducted an inspection (the "2011 Inspection") to complete the assessment of Safetech's compliance with the CISWI requirements.

40. EPA Enforcement Officer met with Mr. José Rivera, owner and President of Safetech ("Mr. Rivera").

41. During the 2011 Inspection, EPA Enforcement Officer was able to confirm that the Facility was in operation.

42. During the 2011 Inspection, EPA confirmed that Safetech has failed to conduct annual tests for PM, HCl and opacity in order to comply with Rule 405(c)(7)(F) of the PRRCAP since the year 2006 until 2011.

43. On July 8 2011, Safetech conducted the annual performance test for HCl, PM and opacity.

44. Based on the information obtained by EPA through the Information Request Letter and during the 2011 Inspection, EPA issued a Notification of Violation (“NOV”) against Respondent on June 15, 2012.

45. On June 22, 2012, Respondent sent a letter acknowledging receipt of the NOV and requesting a meeting to discuss its findings.

46. On July 23, 2012 and August 14, 2012, EPA met with Respondent to discuss the NOV.

47. On August 17, 2012, Respondent provided EPA with a written response to the NOV, along with supporting documents.

48. On September 17, 2012, Respondent provided EPA with a Revised Control Plan and an Annual Operation Report; both documents were dated September 15, 2012.

49. Based on the information available to the EPA during the assessment completed on July 19, 2011, and the 2011 Inspection, EPA issued an Administrative Order, Docket No. CAA-02-2012-1011 (Order), on September 28, 2012.

50. On October 12, 2012, Respondent confirmed receipt of the Order and requested a conference meeting with EPA.

51. A meeting to discuss the Order was held on November 5, 2012.

52. Between October 25 and November 9, 2012, Respondent submitted to EPA: a waste management plan and the final control plan approved by EQB; operator training and qualification program; the tests reports conducted and submitted to EQB for HCl, PM, and the opacity and annual reports previously submitted to EQB.

53. On December 18, 2012, Respondent submitted its stack test protocol, as requested in the Order.

54. The stack test protocol underwent a series of revisions and on August 12, 2013, EPA approved a modified stack test protocol.

55. Respondent conducted the performance tests during the period from September 11 through September 18, 2013.

56. Respondent submitted the performance tests results on December 9, 2013.

57. According to Respondent, the performance tests results for dioxins/furans, HCl, SO₂ and metals met the standards set in Rule 405 of the PRRCAP.

58. However, Respondent also informed EPA that stack emissions for PM, Cd, and lead exceeded their respective regulatory emission limits, as specified in Rule 405(c)(2) of the PRRCAP, as follows:

- a. PM: the standard limit for PM is 70 mg/M³ and Safetech informed in its December 2013 report a result of 127.083 mg/M³;
- b. Cd: the standard limit for Cd is 0.004 mg/M³ and Safetech informed in its December 2013 report a result of 0.008 mg/M³; and
- c. Pb: the standard limit for Cd is 0.270 mg/M³ and Safetech informed in its December 2013 report a result of 0.04 mg/M³.

59. From February 2014 through November 25, 2014, EPA and Safetech discussed the parameters for Respondent's re-run of the tests for PM, Cd and Pb.

60. On March 18 and 19, 2015, EPA and EQB oversaw the performance tests for PM, Cd and Pb and opacity.

61. On May 15, 2015, Respondent submitted the tests results for Cd, Pb, PM and opacity.

62. EPA reviewed the results for the tests conducted on March 18 and 19, 2015, and concluded that the same demonstrated compliance with the emission limits set forth under Rule 405(c) of the PRRCAP.

CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA reaches the following Conclusions of Law:

General Conclusions

63. From the Findings of Fact as set forth above, Respondent, a "person" within the meaning of Section 302(e) of the Act, is subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

64. From the Findings of Fact as set forth above, the Facility is a source that operates a commercial, industrial solid waste incinerator that, at least since October 18, 2005, has been subject to the requirements set forth in Rule 405(c) of the PRRCAP.

65. From the Findings of Fact as set forth above, the Facility is subject to the conditions in its Title V Operating Permit.

Count 1

66. Paragraphs 1 through 65 are repeated and re-alleged as if set forth fully herein.

67. Respondent's failure to meet the emission limits for Cd, Pb and PM during the 2013 performance tests is a violation of Rule 405(c)(2)(A) of the PRRCAP.

68. Respondent's violation of Rule 405(c)(2)(A) of the PRRCAP is a violation of Section 111 of the Act.

Count 2

69. Paragraphs 1 through 68 are repeated and re-alleged as if set forth fully herein.

70. Respondent's failure to establish representative and appropriate operating limits for the initial performance tests is a violation of Rule 405(c)(2)(B) of the PRRCAP.

71. Respondent's violation of Rule 405(c)(2)(B) of the PRRCAP is a violation of Section 111 of the Act.

Count 3

72. Paragraphs 1 through 71 are repeated and re-alleged as if set forth fully herein.

73. Respondent's failure to submit a notification to the EPA stating that an increment of progress was not met, within ten (10) business days after the date for that increment of progress as established in Table 5 of Rule 405(c), is a violation of Rule 405(c)(8) of the PRRCAP.

74. Respondent's violation of Rule 405(c)(2)(B) of the PRRCAP is a violation of Section 111 and 114 of the Act.

Proposed Civil Penalty

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

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, January 7, 2009, and December 6, 2013, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19).² The DCIA provides that the maximum civil penalty per day should be adjusted up to \$27,500 for violations that occurred from January 30, 1997 through March 15, 2004, up to \$32,500 for violations that occurred after March 15, 2004 through January 12, 2009, and up to \$37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations that occurred on or after January 30, 1997 through March 15, 2004, further adjusted an additional 17.23% for violations that occurred after March 15, 2004 through January 12, 2009 for a total of 28.95%, further adjusted an additional 9.83% for violations which occurred from January 12, 2009 through December 6, 2013 for total of 41.63% and further adjusted an additional 4.87% for violations that occurred after December 6, 2013, for a total of 48.53% adjustment.

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts

² The December 6, 2013 inflation adjustment had no effect on the maximum civil penalty of \$37,500 per day.

to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require. EPA considered these factors and proposes a total penalty, for the violations alleged in this Complaint of \$431,848.

Respondent's violations alleged in Counts 1 through 3 resulted in Respondent being subject to the assessment of civil penalties pursuant to Section 113(d) of the Act. The proposed penalty has been prepared in accordance with the criteria in Section 113(e) of the Act, and in accordance with the guidelines set forth in EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy). The CAA Penalty Policy sets forth EPA's guidelines concerning the application of the factors to be considered, under Section 113(e) of the CAA, in proposing the penalty. In addition, in accordance with 28 U.S.C. § 2462, EPA is limited to seeking penalties for up to five years from the date when the claim first accrued.

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

Gravity Based Penalties

Count 1: Violation of Rule 405(c)(2)(A) of the PRRCAP and Section V.(B) of the Title V permit

EPA has determined that Count 1 is an emission control equipment violation and an exceedance over the emission standards. The CAA Penalty Policy, directs that a penalty of \$15,000 be assigned for the violation to the regulatory scheme and assigns a penalty for each pollutant that was measured and that reflects an exceedance over the

standard established by Rule 405(c) of the PRRCAP. The case team has determined to assign a \$15,000 penalty for Respondent's failure to operate the emission control equipment in accordance with the manufacturer specifications and by failing to provide a proper maintenance and install the proper continuous monitoring devices for those parameters needed to maintain the efficiency of the control device.

In addition, the case team has determined that Respondent's exceedance of three (3) regulated pollutants caused actual or potential harm to the environment during the period from the initial performance tests on September 17, 2013 until March 28, 2015, when the emission limits for the three (3) pollutants were met. The CAA Penalty Policy provides that for PM emissions 81.5% above the standard an additional penalty amount of \$15,000 shall be assessed; for Cd emissions 50% above the standard an additional penalty amount of \$10,000 shall be assessed and for Pb emissions 575% above the standard, an additional penalty amount of \$100,000 shall be assessed.

Finally, the CAA Penalty Policy proposes a penalty for the length of time from September 2013 through March 2015, or nineteen months of \$20,000. The proposed total unadjusted penalty for the violation of Rule 405(c)(2)(A) is \$160,000.

The Title V operating permit was in effect throughout the period during which the alleged violations of the PR CISWI Rule 405(c) occurred. The Region's practice is to make an upward adjustment of the gravity component of the proposed penalty in order to account for violations of permit conditions other than those that are solely required by Title V. This upward adjustment is made because the violator's knowledge of the regulatory requirements should be enhanced through the application and permitting process as well as the fact that the violator is required to perform the monitoring by two

sets of regulatory provisions. Applying the 30% adjustment for the Title V operating permit violation results in an assessed penalty, before adjustment for inflation, of \$208,000.

Pursuant to the DCIA and Part 19, EPA adjusted the penalty for violations occurring from September 17, 2013, up to December 6, 2013, which corresponds to an inflation amount of \$13,672. The penalty was further adjusted for the period of time from December 6, 2013 through March 19, 2015, which corresponds to an amount of \$85,004. The total inflationary adjustment for this violation is \$98,676.

The total proposed penalty for Count 1 is \$306,676.

**Count 2: Violation of Rule 405(c)(2)(B) of the PRRCAP
and Section V.(B) of the Title V permit**

EPA has determined that Count 2 is a work practice violation. Safetech operates a wet scrubber system as its air pollution control device for the incineration activities and was required but failed to establish representative and appropriate operating limits using the procedures in Rule 405(c)(2)(B) during the initial performance tests. Safetech completed this requirement during its performance tests of September 2013. The CAA Penalty Policy directs that the proposed initial gravity component of Count 2 be \$15,000 for the importance to the regulatory scheme element. The CAA Penalty Policy also provides that a penalty be assessed, where appropriate, for the length of time of a violation. EPA determined that Count 2 is a one-time violation where Respondent failed to establish the appropriate operating limits during the initial tests. The proposed total penalty for Respondent's violation of Rule 405(c)(2)(B) of the PRRCAP is \$15,000.

The Title V operating permit was in effect throughout the period during which the alleged violations of the PR CISWI Rule 405(c) occurred. The Region's practice is to make an upward adjustment of the gravity component of the proposed penalty in order to account for violations of permit conditions other than those that are solely required by Title V. This upward adjustment is made because the violator's knowledge of the regulatory requirements should be enhanced through the application and permitting process as well as the fact that the violator is required to perform the monitoring by two sets of regulatory provisions. Applying the 30% adjustment for the Title V operating permit violation results in an assessed penalty, before adjustment for inflation, of \$19,500.

Pursuant to the DCIA and Part 19 EPA adjusted the gravity component for Count 2. Therefore, EPA proposes a \$8,118 inflationary adjustment, which reflects the 41.63% inflation adjustment for violations that occurred from March 18, 2009 to September 15, 2013.

The total proposed penalty for Count 2 is \$27,618.

**Count 3: Violation of Rule 405(c)(8) of the PRRCAP
and Section V.(B) of their Title V permit**

EPA has determined that Count 3 is a late reporting violation. Safetech was required to submit the following reports: (1) increments reports; (2) the final control plan; and (3) the waste management plan. The three (3) documents were finally submitted on September 17, 2012. The CAA Penalty Policy directs that a penalty of \$5,000 be assessed for late reporting violations for the importance to the regulatory scheme element. Respondent failed to comply with its duty to report on three separate occasions. The case team has assigned a \$5,000 penalty for each one of these failures to

submit timely reports. Therefore, a penalty of \$15,000 has been apportioned for Respondent's failure to timely submit the following: (1) increment of progress report; (2) the waste management plan; and (3) the final control plan. The case team considered Count 3 a one-time violation. The proposed penalty for Respondent's violation of Rule 405(c)(8) is \$15,000.

The Title V operating permit was in effect throughout the period during which the alleged violations of the PR CISWI Rule 405(c) occurred. The Region's practice is to make an upward adjustment of the gravity component of the proposed penalty in order to account for violations of permit conditions other than those that are solely required by Title V. This upward adjustment is made because the violator's knowledge of the regulatory requirements should be enhanced through the application and permitting process as well as the fact that the violator is required to perform the monitoring by two sets of regulatory provisions. Applying the 30% adjustment for the Title V operating permit violation results in an assessed penalty, before adjustment for inflation, of \$19,500.

Pursuant to the DCIA and Part 19 EPA adjusted the gravity component for Count 2. Therefore, EPA proposes a \$8,118 inflationary adjustment, which reflects the 41.63% inflation adjustment for violations that occurred from March 18, 2009 to September 15, 2013.

The total proposed penalty for Count 3 is \$27,618.

Size of Violator

The CAA Penalty Policy directs that a penalty be proposed that takes into account the size of the violator, determined by the violator's net worth. Based on the Audit Report of 2011, submitted by Respondent to the PR State Department, Respondent's net worth is estimated at \$1,250,000. In accordance with the CAA Penalty Policy, generally, the size of violator component should not be more than 50% of the final total gravity penalty. The proposed amount penalty is \$10,000.

Pursuant to the DCIA and Part 19 direct EPA to adjust the penalty for the size of violator occurring after December 6, 2013. Accordingly, EPA adjusted the penalty for violations occurring after December 6, 2013. The total inflationary adjustment for this violation is \$4,853, making the size of violator component \$14,853..

Toxicity of the pollutants

The CAA Penalty Policy states that a penalty be imposed for violations of NESHAPs emission standards not handled by a separate appendix and non-NESHAP emission violations involving pollutants listed in Section 112(b)(1) of the Clean Air Act Amendments of 1990. A penalty amount of \$15,000 should be assessed for each hazardous air pollutant for which there is a violation.

In this case, Safetech's failure to meet the emissions limits for Cd and Pb, both hazardous air pollutants, makes them subject to an additional penalty of 15,000 per pollutant, or a total of \$30,000.

In addition, the DCIA and Part 19 direct EPA to adjust the penalty of the toxicity occurring after September 17, 2013. Accordingly, EPA adjusted the penalty for

violations and the total inflationary adjustment for the toxicity of pollutants is \$14,559 making the Toxicity component \$44,559.

Economic Benefit

In addition to the gravity component of the proposed penalties, the CAA Penalty Policy directs that EPA determine the economic benefit derived from noncompliance. The CAA Penalty Policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. EPA calculates the economic benefit using a computer program known as the BEN Model.

EPA determined that in this case, the economic benefit of noncompliance for failing to timely submit increment reports, final control plan, and a waste management plan and failure to meet emission limits for cadmium, Pb and PM due to failing to provide proper maintenance, tune-up and add operating parameters monitoring devices to improve and maintain controls in its main air pollution control equipment, is calculated at \$10,851.

Total Proposed Penalty for All Counts

In summary, EPA proposes a total penalty of \$431,848 for the violations alleged in this Complaint.

Notice of Opportunity to Request a Hearing

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.* The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your

right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the CROP.

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

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

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

Carolina Jordán-García
Office of Regional Counsel-CT
U.S. Environmental Protection Agency - Region 2
City View Plaza II - Suite 7000
48 Rd. 165 Km. 1.2
Guaynabo, PR 00968-8069
jordan-garcia.carolina@epa.gov
Tel.: (787) 977-5834

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the

circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

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

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibility of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Carolina Jordán-García at (787) 977-5834, jordan-garcia.carolina@epa.gov, or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

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

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in

the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent which appear on the first page of this Complaint. The check must be mailed to:

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

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

Dated: September 30, 2015


for

José C. Font, Acting Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency – Region 2

cc: Weldin Ortiz, Chairman
Puerto Rico Environmental Quality Board
PO Box 11488
San Juan, PR 00910

bcc: F. Claudio, CEPD-MPCB
ORC-AIR Chron File