UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In re: **EASTMAN KODAK COMPANY** **Respondent** In a proceeding under Section 113(d) of the Clean Air Act	**AMENDED COMPLAINT** **and** **NOTICE OF OPPORTUNITY TO REQUEST A HEARING** CAA-02-2009-1212

Amended Complaint

The United States Environmental Protection Agency (EPA) issues this Amended Complaint and Notice of Opportunity for Hearing (Amended Complaint) to Eastman Kodak Company (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 Complainant in the matter, the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2, is duly delegated the authority to issue administrative Complaints on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

In this Complaint, EPA alleges that Respondent's Kodak Park facility located in Rochester, New York (Facility), with a mailing address of 343 State Street, Rochester, New York 14650, violated requirements or prohibitions of Section 608, 42 U.S.C. § 7671(g) of the Act, the emission standards for the servicing and disposal of air conditioning or refrigeration equipment containing ozone depleting refrigerants, 40 C.F.R. Part 82, Subpart F, 40 C.F.R. § 82.150 *et seq.* (CFC Regulations), and the Facility's Title V Operating Permit, which includes the CFC Regulations as applicable requirements.

On March 16, 2009, the Department of Justice (DOJ) granted EPA's request for a waiver of the time limitation on initiating an administrative enforcement action provided in Section 113(d) of the Act.

Statutory, Regulatory, and Permitting Background

1. Section 113(d) of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act.

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

3. Section 302(e) of the Act defines the term "person" as 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.

4. Title VI of the CAA, 42 U.S.C. §§ 7671-7671q (Stratospheric Ozone Protection), implements the Montreal Protocol on Substances that Deplete the Ozone Layer, and mandates the elimination or control of emissions of ozone depleting substances, which are known or suspected to cause or significantly contribute to harmful effects on the stratospheric ozone layer, referred to as class I and class II substances.

5. Section 608 of the Act (National Recycling and Emission Reduction Program) requires that EPA promulgate regulations establishing standards and requirements for the use and disposal of class I and class II ozone-depleting substances (or class I or class II refrigerants) during the service, repair, or disposal of appliances and industrial process refrigeration (IPR) appliances. The regulations shall include requirements that: reduce the use and emission of class I and class II refrigerants to the lowest achievable level; and maximize the recapture and recycling of class I and class II refrigerants during the service, maintenance, repair, and disposal of appliances.

6. Section 602 of the Act required the EPA administrator to publish a list of "class II" substances within 60 days of November 15, 1990 and required inclusion of hydrochlorofluorocarbon (HCFC-22, also known as R-22) in that list.

7. EPA promulgated the CFC Regulations pursuant to Sections 114 and 608, on May 14, 1993 (58 Fed. Reg. 28,660), and these regulations were revised on July 24, 2003.

8. The CFC Regulations are applicable to, among other things, any person servicing, maintaining, or repairing appliances, and to persons disposing of appliances, including small appliances and motor vehicle air conditioners. 40 C.F.R. § 82.150(b).

9. Section 601(1) of the CAA defines "appliance" as any device that contains and uses a class I or class II substance as a refrigerant for commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

10. Section 601(3) defines "class I substance" as each of the substances listed in Section 602(a) of the CAA.

11. Section 601(4) defines "class II substance" as each of the substances listed in Section 602(b) of the CAA.

12. Section 608 of the CAA states that it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or IPR, to knowingly vent or knowingly release or dispose of any class I or class II refrigerant in such appliance in a manner that permits such refrigerant to enter the environment.

13. The CFC Regulations reiterate the prohibition in Section 608 of the CAA. 40 C.F.R. § 82.154(a), *see also* 58 Fed. Reg. 28,714.

14. 40 C.F.R. § 82.152 defines "refrigerant" as any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect.

15. In accordance with Section 602 of the Act and 40 C.F.R. Part 82, Subpart A, Appendix B lists monochlorodifluoromethane (HCFC-22), which is also known as HCFC-22 or R-22, as a class II controlled substance.

16. 40 C.F.R. § 82.152 defines "industrial process refrigeration" as complex customized appliances used in the chemical, pharmaceutical, petrochemical, and manufacturing industries.

17. 40 C.F.R. § 82.152 defines "industrial process shutdown" to mean, for purposes of § 82.156(i), that an industrial process or facility temporarily ceases to operate or manufacture whatever is being produced at that facility.

18. 40 C.F.R. § 82.152 defines "leak rate" as the rate at which an appliance is losing refrigerant, measured between refrigerant charges. The rate is calculated using only one of the two methods listed.

19. 40 C.F.R. § 82.152 defines "initial verification test" as those leak tests that are conducted as soon as practicable after the repair is completed. There are two (2) types of initial verification tests: a) With regard to the leak repairs that require the evacuation of the appliance or portion of the appliance: a test is conducted prior to the replacement of the full refrigerant charge and before the appliance or portion of the appliance has reached operation at normal operating characteristics and conditions of temperature and pressure; and b) With regard to repairs conducted without the evacuation of the refrigerant charge: a test conducted as soon as practicable after the conclusion of repair work.

20. 40 C.F.R. § 82.152 defines "follow-up verification test" as tests that involve checking the repairs within thirty (30) days of the appliance's returning to normal operating characteristics and conditions. Follow-up verification tests for appliances from which the refrigerant charge has been evacuated means a test conducted after the appliance or portion of the appliance has resumed operation at norrnal operating characteristics and conditions of temperature and pressure, except in cases where sound professional judgment dictates that these tests will be more meaningful if performed prior to the return to normal operating characteristics and conditions. A follow-up verification test with respect to repairs conducted without evacuation of the refrigerant charge means a re-verification test conducted after the initial verification test and usually within thirty (30) days of normal operating conditions. Where an appliance is not evacuated, it is only necessary to conclude any required changes in pressure, temperature or other conditions to return the appliance to normal operating characteristics and conditions.

21. Pursuant to 40 C.F.R. § 82.156(i)(2), owners or operators of an IPR normally containing more than fifty (50) pounds of refrigerant, except as described in (i)(6), (7) and (10) and (i)(2)(i) and (ii), must have leaks repaired if an appliance is leaking at a rate such that the loss of refrigerant will exceed 35% of the total charge during a 12-month period, within thirty (30) days after discovery of the leak, or within thirty (30) days after when the leak should have beeri discovered (if the owner intentionally shielded themselves from information that would reveal the leak) unless granted additional time pursuant to 40 C.F.R.

§ 82.156(i), or within 120 days where an industrial process shutdown in accordance with 40 C.F.R. § 82.156(i)(2)(ii) is required. Where the annualized leak rate of an IPR normally containing more than fifty (50) pounds of refrigerant exceeds 35% of the total charge during a 12-month period, the owners or operators of the IPR must have the leaks repaired to bring the leak rate to below 35% during a 12-month period within thirty (30) days.

22. 40 C.F.R. § 82.156(i)(2)(i) sets forth requirements in the event that necessary parts are unavailable or if requirements of other applicable federal, state, or local regulations make a repair within thirty (30) or 120 days impossible.

23. Pursuant to 40 C.F.R. § 82.156(i)(2)(ii), owners or operators of an IPR will have a 120-day repair period, rather than 30-day repair period, to repair leaks in instances where an industrial process shutdown is needed to repair a leak or leaks from the IPR.

24. Pursuant to 40 C.F.R. § 82.156(i)(2), if the owners or operators of an IPR determine that the leak rate cannot be brought to below 35% during a 12-month period within 30 days (or 120 days, where an industrial process shutdown in accordance with 40 C.F.R. § 82.156(i)(2)(ii) is required) and in accordance with 40 C.F.R. § 82.156(i)(9) determine that an extension in accordance with 40 C.F.R. § 82.156(i) applies, the owner or operators of the IPR must document all repair efforts, and notify EPA of the reason for the inability in accordance with 40 C.F.R. § 82.166(n), within 30 days of making these determinations.

25. Pursuant to 40 C.F.R. § 82.156(i)(3), when an industrial process shutdown has occurred or when repairs have been made while an appliance is mothballed, the owners or operators must conduct an initial verification test at the conclusion of the repairs and a follow-up verification test. The follow-up verification test must be conducted within thirty (30) days of completing the repairs or within thirty (30) days of bringing the appliance back on-line, if taken off-line, but no sooner than when the appliance has achieved normal operating characteristics and conditions.

26. Pursuant to 40 C.F.R. § 82.156(i)(3), when repairs have been conducted without an IPR shutdown or system mothballing, an initial verification test must be conducted upon conclusion of repairs and a follow-up verification leak test must be conducted within thirty (30) days following the initial verification test. The follow-up verification test must be conducted at normal operating characteristics and conditions unless as otherwise specified in § 82.156(i)(3).

27. Pursuant to 40 C.F.R. § 82.156(i)(3)(i), owners or operators of IPRs that take the appliance off-line cannot bring the appliance back on-line until an initial verification test indicates that the repairs undertaken in accordance with 40 C.F.R. § 82.156(i)(2)(i) or (i)(2)(ii), have been successfully completed, demonstrating the leak or leaks are repaired.

28. Pursuant to 40 C.F.R. § 82.166(k), owners/operators of IPRs normally containing fifty (50) pounds or more of refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added. The owner/operator must keep records of refrigerant

purchased and added to such appliances in cases where owners add their own refrigerant. Such records should indicate the date(s) when refrigerant is added.

29. Pursuant to 40 C.F.R. § 82.166(m), all records required to be maintained must be kept for a minimum of three years, unless otherwise indicated.

30. Pursuant to 40 C.F.R. § 82.166(n)(1), the owner or operator of IPRs must file a report under § 82.156(i)(2) explaining why more than thirty days is needed to complete repairs that must meet the specifications provided in 40 C.F.R. § 82.166(n)(1).

31. Section 502(a) of the Act provides, among other things, that after the effective date of any permit program approved or promulgated pursuant to Title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under Title V of the Act or to operate a Title V affected source, except in compliance with a permit issued by a permitting authority under Title V of the Act.

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

33. 40 C.F.R. Part 70, promulgated pursuant to § 502(b) of the Act, sets forth, among other things, corresponding minimum requirements for state operating permit programs.

34. 40 C.F.R. Part 71 sets forth the comprehensive federal air quality operating permit program consistent with the requirements of Title V of the Act, and defines the requirements and the corresponding procedures by which EPA will issue Title V operating permits.

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

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

37. EPA granted interim approval of the New York Title V Operating Permit Program on December 9, 1996, 61 Fed. Reg. 57,589 (Nov. 7, 1996), and granted full approval of the program on February 5, 2002. 67 Fed. Reg. 5,216 (Feb. 5, 2002).

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

39. Section 503(b)(2) of the Act provides that the regulations promulgated pursuant to Section 502(b) of the Act shall include requirements that the permittee periodically (but no less frequently than annually) certify that its

facility is in compliance with any applicable requirements of the Title V Operating Permit and that the permittee promptly report any deviations from the operating permit requirements to the permitting authority.

40. 6 NYCRR 201-6.5(c)(2), a provision in the New York Title V Operating Permit Program, requires that records of all monitoring data and support information must be retained for a period of at least five years from the date of the monitoring, sampling, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, all quality assurance information and copies of all reports required by the permit.

41. 6 NYCRR 201-6.5(e), a provision in the NY Title V Operating Permit Program, requires that sources certify compliance annually and submit annual certifications to both the permitting agency, New York State Department of Environmental Conservation (NYSDEC) and EPA.

42. On February 20, 2003, NYSDEC issued the Facility a Title V Operating Permit, # 8-2614-0025/01801.

43. Condition 25 of Respondent's Title V Operating Permit includes the CFC Regulations as applicable requirements.

44. Condition 5 of Respondent's Title V Operating Permit includes 6 NYCRR 201-6.5(c)(2) as an applicable requirement.

45. Condition 2-18 of Respondent's Title V Operating Permit includes 6 NYCRR 201-6.5(e) as an applicable requirement.

Findings of Fact

46. Paragraphs 1 – 45 are realleged and incorporated herein by reference.

47. Respondent is a corporation duly organized under the laws of New York.

48. Respondent is the owner and/or operator of the Kodak Park Facility located in Rochester, New York.

49. On January 31, 2007, EPA sent Respondent a letter in which it requested information pursuant to Section 114 of the Act (Section 114 Letter).

50. In the Section 114 Letter, EPA requested, among other things, that Respondent provide its IPR service records for years 2002 through 2007.

51. On February 23, 2007, Respondent spoke to EPA and requested an extension of time to submit its response to the Section 114 Letter.

52. By letter dated February 23, 2007, Respondent formally requested a thirty (30) day extension, until April 9, 2007, if necessary, to provide responses to the Section 114 Letter.

53. On March 9, 2007, Respondent responded to the Section 114 Letter (Initial 114 Response).

54. Respondent's Initial 114 Response included "requested [ozone depleting substance] information from [Respondent's] Kodak Park site-wide Utilities and Building Services departments."

55. By letter dated March 26, 2007, EPA granted Respondent's request for an extension of time (EPA Extension Letter).

56. In the EPA Extension Letter, EPA stated that it received Respondent's Initial 114 Response.

57. In the EPA Extension Letter, EPA stated that "[a]ny requested information that was not provided in the [Initial 114 Response] is to be sent for receipt by EPA on or before April 9, 2007."

58. On April 5, 2007, Respondent filed another set of responses to the Section 114 Letter (Second 114 Response).

59. Respondent's Second 114 Response included "the rest of the operating departments at Kodak Park with refrigeration equipment containing more than 50lbs of [ozone depleting substance] material."

60. EPA performed a detailed analysis of the service records provided by Respondent in its Initial 114 Response and its Second 114 Response (EPA File Review).

Industrial Refrigeration Machine Unit 26 (Unit 26)

61. In the Initial 114 Response, Respondent provided service records for Industrial Refrigeration Machine Unit 26 (Unit 26).

62. In the Initial 114 Response, Respondent included Appendix 10, entitled "Available Kodak Park ODS Equipment Inventories."

63. Respondent's Initial 114 Response, Appendix 10 lists Unit 26 as an appliance at the Facility.

64. Respondent's Initial 114 Response, Appendix 10 lists Unit 26 as an IPR.

65. Respondent's Initial 114 Response, Appendix 10 indicates that Unit 26 has a full charge of 9,600 pounds of R-22.

66. In addition, the service records provided for Unit 26 in the Initial 114 Response has a full charge of 9,600 pounds of HCFC-22 (or R-22).

67. In the Initial 114 Response for Unit 26, Respondent provided a Service Record Form, issued February 19, 2004 and completed February 22, 2004, indicates that Respondent added 1,308 pounds of R-22 to Unit 26 on February 20, 2004.

68. In the Initial 114 Response for Unit 26, Respondent provided a Service Record Form, issued April 12, 2004 and completed March 9, 2005, that indicates on February 9, 2005 Respondent found a leak of R-22 for Unit 26.

69. An "Environmental Incident Report," Incident Number 2004-0685, included with the Service Record Form, issued April 12, 2004 and completed March 9, 2005, indicates that on April 12, 2004 Respondent found a leak of R-22 for Unit 26.

70. The "Environmental Incident Report," Incident Number 2004-0685, included with the Service Record Form, issued April 12, 2004 and completed March 9, 2005, indicates that Respondent added 600 pounds of R-22 to Unit 26 on April 12, 2004.

71. During the EPA File Review, EPA calculated the leak rate at 44% for the April 12, 2004 R-22 addition to Unit 26, based on information provided in the Service Record Form, issued April 12, 2004 and completed March 9, 2005.

72. The "Environmental Incident Report," Incident Number 2004-0685, included with the Service Record Form, issued April 12, 2004 and completed March 9, 2005, indicates that the annual leak rate calculation was 43.8% for Unit 26.

73. The "Environmental Incident Report," Incident Number 2004-0685, included with the Service Record Form, issued April 12, 2004 and completed March 9, 2005, states that "[w]e believe there is a small leak on the [ ] Refrigerant Low Side and when we purge the air from the unit we are losing a small amount of refrigerant from the unit. At this time we are unable to remove this unit from service because of production demands on the -95 degree system."

74. The "Environmental Incident Report," Incident Number 2004-0685, included with the Service Record Form, issued April 12, 2004 and completed March 9, 2005, does not indicate that Respondent conducted a follow-up verification test to Unit 26 after an initial verification test for the leak found on April 12, 2004.

75. During the EPA File Review, EPA did not find any service records for Unit 26 that indicate Respondent conducted a follow-up verification test after an initial verification test for the leak found on April 12, 2004.

76. The "Refrigerant Work Record Log" report, included with the Service Record Form, issued April 12, 2004 and completed March 9, 2005, indicates that Respondent added 2,000 pounds of R-22 to Unit 26 on March 5, 2005.

77. In the Initial 114 Response, Respondent provided a "Refrigerant Work Record Log," included with the Service Record Form, issued May 10, 2005 and completed June 2, 2005, indicates that Respondent added 700 pounds of R-22 to Unit 26 on June 2, 2005.

78. In the Initial 114 Response, Respondent provided a Service Record Form, Service ID #236, issued December 16, 2005 and completed February 2, 2006, indicates that Respondent found a leak of R-22 for Unit 26 on December 16, 2005.

79. The Service Record Form, Service ID #236, issued December 16, 2005 and completed February 2, 2006, indicates that Respondent added 500 pounds of R-22 to Unit 26 on December 16, 2005.

80. The Service Record Form, Service ID #236, issued December 16, 2005 and completed February 2, 2006, indicates that Respondent added 520 pounds of R-22 to Unit 26 on December 27, 2005.

81. EPA calculated the leak rate at 180% for the December 27, 2005 R-22 addition to Unit 26, based on information provided in the Service Record Form, issued December 16, 2005 and completed February 2, 2006.

82. The Service Record Form, Service ID #236, issued December 16, 2005 and completed February 2, 2006, does not indicate that Respondent conducted a leak repair on Unit 26 for the leak found on December 16, 2005.

Chilled Water Chiller for Reactor Jackets, Circuit #2 (Chilled Water Chiller Unit, Circuit #2)

83. In the Second 114 Response, Respondent provided service records for Chilled Water Chiller for Reactor Jackets, Circuit #2 (Chilled Water Chiller Unit, Circuit #2).

84. In the Second 114 Response, Respondent included an Appendix 10, entitled, "Kodak Park [ozone-depleting substance] Equipment Inventories."

85. Respondent's Second 114 Response, Appendix 10 lists the Chilled Water Chiller Unit, Circuit #2 as an appliance at the Facility.

86. Respondent's Second 114 Response, Appendix 10 lists the Chilled Water Chiller Unit, Circuit #2 as an IPR.

87. Respondent's Second 114 Response, Appendix 10 indicates that the Chilled Water Chiller Unit, Circuit #2 has a full charge of 130 pounds of R-22.

88. Respondent's Second 114 Response indicates that Respondent receives contract service for the Facility's appliances from eleven (11) companies.

89. Respondent's Second 114 Response indicates that one of Respondent's contractors is Trane.

90. In the Second 114 Response, Respondent provided a "Trane Service Report" number 06-0758671, dated May 5, 2006, that indicates Respondent's contractor, Trane, added 105 pounds of R-22 to the Chilled Water Chiller Unit, Circuit #2 on May 5, 2006.

91. In the Second 114 Response, Respondent provided a "Trane Service Report" number 06-0758671, dated May 8, 2006, that indicates

Respondent's contractor, Trane, added R-22 to the Chilled Water Chiller Unit, Circuit #2 on May 8, 2006.

92. The "Trane Service Report" number 06-0758671, dated May 8, 2006, does not document the amount of R-22 added on May 8, 2006 to the Chilled Water Chiller Unit, Circuit #2.

93. During the EPA File Review, EPA did not find any service records documenting how much R-22 was added on May 8, 2006 to the Chilled Water Chiller Unit, Circuit #2.

Title V Annual Compliance Certifications

94. In the Facility's Title V Operating Permit 2006 annual compliance certification, Respondent certified that the Facility is in compliance with Condition 25 of the Facility's Title V Operating Permit, which includes the CFC Regulations as applicable requirements.

Count 1

95. Paragraphs 1–94 are repeated and re-alleged as if set forth fully herein.

96. Respondent is a "person" within the meaning of Section 302(e) of the Act.

97. Respondent's Facility is subject to the CFC Regulations, promulgated pursuant to Sections 114 and 608 of the Act.

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

99. Respondent is subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

100. Respondent, as owner and operator of Unit 26, an IPR normally containing more than fifty (50) pounds of class II refrigerant, R-22, is subject to 40 C.F.R. § 82.156(i)(2).

101. Respondent's failure to conduct a follow-up verification test on Unit 26 for the April 12, 2004 leak, which was above 35% of the total charge during a 12-month period, is a violation of 40 C.F.R. § 82.156(i)(3) and Condition 25 of the Facility's Title V Operating Permit.

102. Respondent's violation of 40 C.F.R. § 82.156(i)(3) is a violation of Sections 114 and 608 of the Act.

103. Respondent's violation of Condition 25 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 2

104. Paragraphs 1–103 are repeated and re-alleged as if set forth fully herein.

105. Respondent, as owner and operator of Unit 26, an IPR normally containing more than fifty (50) pounds of class II refrigerant, R-22, is subject to 40 C.F.R. § 82.156(i)(2).

106. Respondent's failure to repair Unit 26 for the December 27, 2005 leak, which was above 35% of the total charge during a 12-month period, to bring the leak rate below 35% during a 12-month period within thirty (30) days (or 120 days, where an industrial process shutdown is needed) is a violation of 40 C.F.R. § 82.156(i)(2) and Condition 25 of the Facility's Title V Operating Permit.

107. Respondent's violation of 40 C.F.R. § 82.156(i)(2) is a violation of Section 608 of the Act.

108. Respondent's violation of Condition 25 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 3

109. Paragraphs 1–108 are repeated and re-alleged as if set forth fully herein.

110. Respondent, as owner and operator of the Chilled Water Chiller Unit, Circuit #2, an IPR normally containing more than fifty (50) pounds of a class II refrigerant, R-22, is subject to 40 C.F.R. § 82.156(i)(2).

111. Respondent's failure to document how much R-22 was added on May 8, 2006, to the Chilled Water Chiller Unit, Circuit #2 is a violation of 40 C.F.R. § 82.166(k) and Condition 25 of the Facility's Title V Operating Permit.

112. Respondent's violation of 40 C.F.R. § 82.166(k) is a violation of Sections 114 and 608 of the Act.

113. Respondent's violation of Condition 25 of the Facility's Title V Operating Permit is a violation of the NYS Title V Operating Program and Title V of the Act.

Count 4

114. Paragraphs 1–113 are repeated and re-alleged as if set forth fully herein.

115. Respondent's failure to identify intermittent compliance and certify intermittent compliance with the CFC Regulations in its 2006 annual compliance certification, as described in Count 3 above, is a violation of 6 NYCRR 201-6.5(e) and Condition 2-18 of the Facility's Title V Operating Permit.

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

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

Proposed Civil Penalty

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to $25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, and January 7, 2009, EPA adopted

regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the maximum civil penalty per day should be adjusted up to $27,500 for violations that occurred from January 30, 1997 through March 15, 2004, up to $32,500 for violations that occurred after March 15, 2004 through January 12, 2009, and up to $37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations which occurred on or after January 30, 1997, further adjusted an additional 17.23% for violations which occurred March 15, 2004 through January 12, 2009, and further adjusted an additional 9.83% for violations that occurred after January 12, 2009.

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 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.

Respondent's violations, alleged in Counts 1 through 4, result in Respondent being subject to the assessment of administrative 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), which reflects EPA's application of the factors set forth in Section 113(e) of the Act, and EPA's CAA Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant, Appendix X of the CAA Penalty Policy (CAA Penalty Policy, Appendix X).

EPA proposes a total penalty of $128,886 for all counts alleged in this Complaint. 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.

Preliminary Deterrence Component of Proposed Penalty

The CAA Penalty Policy indicates that the preliminary deterrence amount is determined by combining the gravity component and the economic benefit component of the penalty calculated. The gravity component includes, as applicable, penalties for actual harm, importance to the regulatory scheme, size of violator and adjustments to the gravity component for degree of willfulness or negligence, degree of cooperation, prompt reporting, correction, history of non-compliance and environmental damage. Actual harm is calculated, where applicable, in accordance with the level of the violation, the toxicity of pollutant, the sensitivity of the environment, and the length of time of violation.

Gravity Component

Count 1: Violation of 40 C.F.R. § 82.156(i)(3) and the Facility's Title V Permit Condition 25 for Unit 26

EPA proposes a penalty of $15,000 for Respondent's failure to conduct a follow-up verification test on Unit 26 as required in 40 C.F.R. § 82.156(i)(3). EPA determined that the "Potential Environmental Harm" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" for the failure to follow work practice requirements in 40 C.F.R. § 82.156. EPA determined that the "Extent of Deviation" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" when a respondent deviates from requirements of the regulation to such an extent that most or important aspects of the requirements are not met, resulting in substantial noncompliance. The "Potential for Harm" and "Extent of Deviation" each form an axis on a penalty assessment matrix. For violations classified as major/major, the CAA Penalty Policy, Appendix X penalty matrix 1 provides for a $15,000 penalty. EPA adjusted this proposed penalty 30% for the violation of the Title V condition, which included the CFC Regulations as applicable requirements, resulting in a proposed penalty of $19,500.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a $5,645 inflationary adjustment

which reflects the 28.95% inflation adjustment for violations that occurred during this period of time. The total proposed penalty for this violation is $25,145 for Count 1.

Count 2: Violation of 40 C.F.R. § 82.156(i)(2) and the Facility's Title V Permit Condition 25 for Unit 26

EPA proposes a penalty of $15,000 for Respondent's failure to perform a leak repair to Unit 26 as required in 40 C.F.R. § 82.156(i)(2). EPA determined that the "Potential Environmental Harrn" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" for not repairing leaks of equipment normally containing fifty (50) pounds or more of class II refrigerant. EPA deterrnined that the "Extent of Deviation" is major because the CAA Penalty Policy, Appendix X provides for an assessment of "major" when a respondent deviates from requirements of the regulation to such an extent that most or important aspects of the requirements are not met, resulting in substantial noncompliance. The "Potential for Harm" and "Extent of Deviation" each form an axis on a penalty assessment matrix. For violations classified as major/major, the CAA Penalty Policy, Appendix X penalty matrix 1 provides for a $15,000 penalty. EPA adjusted this proposed penalty 30% for the violation of the Title V condition, which included the CFC Regulations as applicable requirements, resulting in a proposed penalty of $19,500.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a $5,645 inflationary adjustment

which reflects the 28.95% inflation adjustment for violations that occurred during this period of time. The total proposed penalty for this violation is $25,145 for Count 2.

Count 3: Violation of 40 C.F.R. § 82.166(k) and the Facility's Title V Permit Condition 25 for the Chilled Water Chiller Unit, Circuit #2

EPA proposes a penalty of $750 for Respondent's failure to document how much R-22 was added to the Chilled Water Chiller Unit, Circuit #2 as required in 40 C.F.R. § 82.166(k). EPA determined that the "Potential Environmental Harm" is minor because the CAA Penalty Policy, Appendix X provides for an assessment of "minor" for recordkeeping requirements not properly followed. EPA determined that the "Extent of Deviation" is rninor because the CAA Penalty Policy, Appendix X provides for an assessment of "minor" when a respondent deviates somewhat from the regulation because most, if not all important aspects of the requirements are met. Respondent indicated an addition of R-22, but did not document the quantity, therefore EPA determined the extent of deviation to be minor. The "Potential for Harm" and "Extent of Deviation" each form an axis on a penalty assessment matrix. For violations classified as minor/minor, the CAA Penalty Policy, Appendix X penalty matrix 1 provides for a $750 penalty. EPA Adjusted this proposed penalty 30% for the violation of the Title V condition, which included the CFC Regulations as applicable requirements, resulting in a proposed penalty of $975.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a $282 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time. The total proposed penalty for this violation is $1,257 for Count 3.

Count 4: Violation of 6 NYCRR 201-6.5(e) and the Facility's Title V Permit Condition 2-18 for year 2006

EPA proposes a penalty of $10,000 for Respondent's failure to identify non-compliance and certify the non-compliance with the CFC Regulations in its 2006 annual compliance certification as provided by 6 NYCRR 201-6.5(e) and the Facility's Title V Permit Condition 2-18. In the "Importance to Regulatory Scheme," the CAA Penalty Policy provides for an assessment of $5,000 - $15,000 for an incomplete report or notice. EPA proposes $10,000 for Respondent's failure to identify non-compliance and certify non-compliance with the CFC Regulations.

The DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. EPA proposes $2,895, which is a 28.95% inflation adjustment for the proposed penalty for this violation resulting in a total proposed penalty of $12,895 for Count 4.

Size of Violator

The CAA Penalty Policy directs that a penalty be proposed that takes into account the size of violator, determined by the violator's net worth. Based on a 2009 Dun & Bradstreet Report, Respondent's net worth is estimated at $961,000,000. The CAA Penalty Policy, Appendix X states that the gravity component will be scaled for size of violator using a multiplier. The CAA Penalty Policy, Appendix X directs that for businesses with a net worth of more than $300,000, the net worth be divided by $300,000 to determine the multiplier. In accordance with the Policy, generally, the size of violator component should not be more than 50% of the penalty (i.e., no multiplier greater than 2 would be used). The penalty for environmental harm/importance to regulatory scheme multiplied by the size of violator factor becomes the adjusted gravity component.

Title V Adjustment

The CAA Penalty Policy indicates that the gravity cornponent of a penalty can be aggravated up to 100% in consideration of, among other things, the extent to which the violator knew of the legal requirement. In this instance, Respondent included its obligation to comply with the CFC Regulations in its Title V application and was further put on notice of the requirements in its Title V Operating Permit. The permit was in effect throughout the entire period of time in which the CFC Regulation violations, alleged here, occurred. Therefore, in

accordance with the Policy and Region 2's practice with regard to Title V violations, EPA proposes the penalties for the alleged violations of the CFC Regulations be aggravated by 30% ($11,896).

Inflation Adjustment

Pursuant to the Debt Collection Improvement Act (DCIA), 31 U.S.C. §§ 3701 *et seq.*, and 40 C.F.R. Part 19, the regulation promulgated pursuant to the DCIA, the CAA Penalty Policy "preliminary deterrence" amount should be adjusted 10% for inflation for all violations occurring January 30, 1997 through March 15, 2004, further adjusted an additional 17.23% for all violations occurring on March 15, 2004 until January 12, 2009, and further adjusted an additional 9.83% for all violations occurring after January 12, 2009. For purposes of this Complaint, the total adjustment for inflation is 28.95%. Respondent's violations began, as early as, April 2004 and continue to August 2006. Inflation adjustments for violations were done in accordance with the DCIA requirements, which resulted in a total inflation adjustment of $8,902.

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

econornic benefit using a computer program that is called the BEN Model. The CAA Penalty Policy, Appendix X states that the CAA Penalty Policy indicates that it is EPA's goal to collect the violator's economic benefit and that EPA may elect not to assess an economic benefit component in enforcement actions where the violator's economic benefit is less than $5,000. The CAA Penalty Policy, Appendix X states that in Section 608 enforcement actions, EPA may elect not to assess an economic benefit component where the economic benefit is less than $500.

The Region calculated the economic benefit component of the proposed penalty, which reflects the avoided cost for leak verification testing. Upon reviewing the EPA CAA Penalty Policy and EPA practice in national IPR leak violation cases, the Region determined the cost avoided for leak verification testing is $200 per failed leak verification test. The Region determined that there was one (1) failed test, therefore the Region calculated the total economic benefit component as $200. In accordance with regional and national policy, the Region elected to propose this penalty even though it was below $500.

In summary, EPA proposes a total penalty of $128,886 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 matters such as this 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 Cornplaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

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

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

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

Kara E. Murphy
Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the

Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

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

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Kara E. Murphy at

(212) 637-3211 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

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

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) that 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 10 2009

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

To: JoAnn Gould, Esq.
Senior Environmental Counsel
Harter Secrest & Emery, LLP
1600 Bausch & Lomb Place
Rochester, NY 14604

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

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

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

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

In the Matter of Eastman Kodak Company, Docket No. CAA-02-2009-1212

CERTIFICATE OF SERVICE

I, Kara E. Murphy, certify that the foregoing Amended Complaint was sent this day in the following manner to the addressees listed below:

Original and One Copy
By Hand:

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

Copy by
Pouch Mail:

The Honorable Barbara A. Gunning
Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Copy by
FedEX – Next Day Delivery:

JoAnn Gould, Esq.
Senior Environmental Counsel
Harter Secrest & Emery, LLP
1600 Bausch & Lomb Place
Rochester, NY 14604

Dated: Sept. 11, 2009
New York, New York

Kara E. Murphy
Kara E. Murphy

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

FEDEX – NEXT DAY DELIVERY

JoAnn Gould, Esq.
Harter, Secrest & Emery, LLP
1600 Bausch & Lomb Place
Rochester, New York 14604-2711

Re: **AMENDED COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING**
In the matter of: Eastman Kodak Company, CAA-02-2009-1212

Dear Ms. Gould:

Enclosed is a copy of the above-referenced AMENDED COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING (Amended Complaint). EPA is sending this letter to you as counsel for Eastman Kodak Company. The Amended Complaint is being filed for the purpose of proposing a penalty pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401 et seq., § 7413(d). The Amended Complaint alleges violations of Sections 114, 608, and Title V of the Act. The total amount of the penalty proposed is $128,886.

I direct your attention to the section of the Amended Complaint entitled, "NOTICE OF OPPORTUNITY FOR A HEARING." If you wish to contest any of the allegations of the Amended Complaint or the amount of the proposed penalty, you must do so within the time specified in the notice or you may lose the opportunity for a hearing. You must file a written Answer to the Amended Complaint within twenty (20) days of receipt, as established by the Certified Mail Return Receipt, or EPA may file a motion for default judgment. If the motion is granted, the proposed penalty will become due and payable thirty (30) days after a final order.

Please do not hesitate to contact me at (212) 637-3211.

Sincerely,

Kara E. Murphy

Kara E. Murphy
Assistant Regional Counsel

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

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

Counsel on behalf of EPA:

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

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

Colleen McCarthy, Air Counsel
Bureau of Stationary Sources
New York State Department of Environmental Conservation
625 Broadway
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Thomas Marriott, Regional Air Pollution Control Engineer
New York State Department of Environmental Conservation, Region 8
6274 E. Avon-Lima Road
Avon, NY 14414-9519

Leo Bracci, Associate Attorney
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