



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

5 Post Office Square, Suite 100
Boston, MA 02109-3912

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September 30, 2015

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

BY HAND

Re: *In the Matter of Penobscot McCrum, LLC*
Docket No. CAA-01-2015-0065

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint and Opportunity to Request a Hearing and a Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maximilian Boal".

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Jay McCrum, Manager and CEO
Penobscot McCrum, LLC
28 Pierce Street
Belfast, ME, 04915

SEP 30 2015

EPA ORC ^{WS}
Office of Regional Hearing Clerk

IN THE MATTER OF)
)
Penobscot McCrum, LLC)
28 Pierce Street)
Belfast, ME 04915)
)
Respondent.)
_____)

Docket No. CAA-01-2015-0065

**ADMINISTRATIVE COMPLAINT
AND
NOTICE OF
OPPORTUNITY FOR HEARING**

I. STATUTORY AND REGULATORY BASIS

1. Complainant, the United States Environmental Protection Agency, Region 1 ("EPA"), issues this Administrative Complaint and Notice of Opportunity for Hearing to Penobscot McCrum, LLC ("Respondent") under Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d).

2. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish, for each listed substance, the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C.

§ 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a Risk Management Plan (“RMP”).

3. The regulations promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are found at 40 C.F.R. Part 68.

4. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

5. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 (“RMP chemicals” or “regulated substances”) and their associated threshold quantities, in accordance with the requirements of Sections 112(r)(3) and (7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and (7). This list includes anhydrous ammonia as an RMP chemical and identifies a threshold quantity of 10,000 pounds.

6. A “process” is defined by 40 C.F.R. § 68.3 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.

7. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R.

§ 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

8. Each process in which a regulated substance is present in more than a threshold quantity (“covered process”) is subject to one of three risk management programs. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Pursuant to 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the Occupational Safety and Health Administration (“OSHA”) process safety management (“PSM”) standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

9. Anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds is subject to OSHA’s PSM requirements at 29 C.F.R. § 1910.119.

10. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source subject to the requirements of Part 68 submit an RMP to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with Part 68 in a summary format. For example, the RMP for a Program 3 process documents compliance with the elements of a program 3 Risk Management Program, including 40 C.F.R. Part 68, Subpart A (including General Requirements and a Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart D

(Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

11. Additionally, 40 C.F.R. § 68.190(b) also requires that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update. Other aspects of the prevention program must also be periodically updated.

12. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$37,500 per day for violations occurring after January 12, 2009.

13. EPA has determined that this action is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

III. GENERAL ALLEGATIONS

14. Respondent Penobscot McCrum, LLC owns and operates a potato processing facility located at 32 Pierce Street, Belfast, ME, 04915 ("the Facility").

15. The Facility is located in Belfast, ME, and according to the U.S. Census data from 2010, a few thousand people live near the Facility. The Facility is located within 0.25 miles of Route 1 and 0.5 miles from the downtown area of Belfast.

16. Respondent is a limited liability company registered in the State of Maine and is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), against whom an

administrative order assessing a civil penalty may be issued under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

17. The Facility is a building or structure from which an accidental release may occur and is therefore a “stationary source,” as defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

18. At all times relevant to the violations alleged herein, Respondent was the “owner or operator” of the Facility, as defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

19. Respondent uses anhydrous ammonia in a refrigeration process (“the Process”), as defined by 40 C.F.R. § 68.3.

20. On June 25, 2004, Respondent completed its first Process Hazard Analysis (“PHA”) for the Facility.

21. On July 2, 2004, Respondent filed a Program 3 RMP for the Process (“the 2004 RMP”). In the 2004 RMP, Respondent reported that it used 11,500 pounds of anhydrous ammonia and the largest vessel at Facility contained 7,800 pounds of ammonia.

22. On March 2, 2010, Respondent completed its most-recent PHA for the Facility with a change completion date of August 19, 2011.

23. According to Respondent’s most recent RMP re-submission in 2014, (“the 2014 RMP”) Respondent again reported that its Program 3 Process uses 11,500 pounds of anhydrous ammonia and the largest vessel at Facility contains 7,800 pounds of ammonia.

24. For calendar year 2014, Respondent submitted a Tier 2 report pursuant to Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act of 1986

("EPCRA"), 42 U.S.C. §§ 11021 and 11022, reporting that the Facility used 14,500 pounds of ammonia, including 14,500 pounds of ammonia in the largest vessel at the Facility.

25. Accordingly, the Process is a "covered process" subject to the provisions of Part 68 because Respondent "uses," "stores," and "handles" the RMP chemical anhydrous ammonia at the Facility in an amount greater than 10,000 pounds.

26. According to Respondent's 2004 RMP and 2014 RMP, there are public receptors within the distance to the endpoint for a worst case release of the amount of anhydrous ammonia used in the Process. Likewise, modeling performed by EPA indicates that the endpoint for a worst case release from the Process is greater than the distance to a public receptor.

27. Additionally, the Process is subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119 because it uses anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds.

28. Therefore, in accordance with 40 C.F.R. § 68.10(a)-(d), Respondent's use, storage, and handling of anhydrous ammonia in its Process is subject to the requirements of RMP Program 3.

29. Ammonia presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Exposure to 300 parts per million is immediately dangerous to life and health. Ammonia is also flammable at concentrations of approximately 16% to 25% by volume in air. It can explode if released in an enclosed space with a source of ignition present, or if a vessel containing anhydrous ammonia is exposed to fire. In light of the potential hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards outlining the recognized and generally accepted good engineering practices ("RAGAGEP") in the

ammonia refrigeration industry. In collaboration with the American National Standards Institute (“ANSI”), the International Institute of Ammonia Refrigeration (“IIAR”) has issued (and updates) “Standard 2: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems,” along with other applicable standards and guidance. Also in collaboration with the American National Standards Institute, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) has issued (and updates) “Standard 15: Safety Standard for Refrigeration Systems.” These standards are consistently relied upon by refrigeration experts and are sometimes incorporated into state building, fire, and mechanical codes.

30. On October 15, 2014, EPA inspectors visited the Facility and performed an inspection (“the Inspection”) to assess Respondent’s compliance with Section 112(r) of the CAA.

31. The Inspection and EPA’s review of subsequently submitted information, including the 2004 RMP and the 2014 RMP submissions, revealed some potentially dangerous conditions relating to the Process beginning in July 2004 and continuing until at least the time of the Inspection, including:

a. Respondent had not accurately evaluated offsite consequences in release scenarios, including: (1) using the wrong parameter to characterize the area around the Facility as “urban” rather than “rural” for surface roughness purposes, thereby underestimating the geographic area that would be impacted by any ammonia releases and underestimating the number of people who would be impacted by a few thousand, and (2) under representing the worst-case release quantity of ammonia as 7,800 pounds rather than 14,500 pounds (if

Respondent's 2014 Tier II report is more accurate than the 2014 RMP as to the amount of ammonia in the largest vessel at the Facility).

b. Respondent's 2010 PHA did not address all possible hazards of the Process given the site characteristics of the Facility. The effectiveness of the 2010 PHA was substantially limited because Respondent did not plan for and complete all of the identified action items associated with the covered Process. Respondent failed to identify and/or correct significant hazardous conditions. The 2010 PHA revisited the 2004 PHA recommendations and documented that twelve items from the 2004 PHA were incomplete, and the status of an additional eight recommendations were left blank. Specifically, failures of the 2010 PHA to address all possible hazards associated with the Process included, but were not limited to:

i. The outdoor portion of the Process' physical protection system, a fence, was compromised and in poor condition.

ii. Respondent failed to develop appropriate plans for emergency responses to ammonia leaks and failed to address how it would handle off-site consequences. The PHA indicated that Respondent's Facility will not respond to, stop, or repair a leak of the Process if such action requires entering an ammonia atmosphere; however, the PHA also notes that the local fire department will not respond to an ammonia release at the Facility. The Facility's emergency response contractor is Clean Harbors, which is located approximately one hour away from the Facility in Bangor, ME and does not have the capability to respond to an ammonia release requiring Level A response capabilities. Therefore, Respondent failed to ensure that the general public would be adequately protected if an ammonia release occurred at the Facility by failing: to identify appropriate emergency preparedness measures, to coordinate

and communicate with emergency responders, and to account for the Facility's distance from appropriately equipped emergency responders.

iii. Training and inspection programs for the Process were not being implemented and/or document as recommended.

iv. Although the Process is located outside and in close proximity to the general public, the PHA did not consider the need for outdoor ammonia detectors.

c. Respondent failed to comply with process safety information requirements, including failure to document that either the equipment complies with RAGAGEP or that existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use is designed, maintained, inspected, tested, and operated in a safe manner. For Respondent's Process, applicable RAGAGEP sources include: Int'l Inst. of Ammonia Refrigeration, Standard 2-2008, with Addendum A: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems (August 4, 2010), [hereinafter "IIAR 2-2008"]; Int'l Inst. of Ammonia Refrigeration, Bulletin No. 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, [hereinafter "IIAR Bull. 109"]; Int'l Inst. of Ammonia Refrigeration, Bulletin No. 110: Guidelines for: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems [hereinafter "IIAR Bull. 110"]; and, Am. Nat'l Standards Inst./Am. Soc'y of Heating, Refrigerating and Air-Conditioning Eng'rs, Standard 15-2010: Safety Standard for Refrigeration Systems, [hereinafter "ASHRAE 15-2010"]. Specifically:

i. Respondent failed to maintain UA1 forms for pressure vessels including the high pressure receiver.

ii. The discharge points for Respondent's ammonia pressure relief devices were located less than fifteen feet above the building's roof line, and another ammonia system pressure relief device discharged approximately five feet above ground level behind the intercooler. The Process' condenser relief valves also discharge below the roof line and near building windows and vents. To prevent re-circulation of contaminated air and to protect people from being sprayed with ammonia, the recommended industry practice and standard of care is for ammonia pressure relief device discharge points to be located: greater than twenty feet from windows, ventilation intakes, or personnel exits; greater than fifteen feet above grade/roof surface; and with outlets aimed upwards instead of downwards. *See, e.g., IIAR 2-2008, supra, §§ 11.3.6.3 and 11.3.6.4.*

iii. The Process included numerous examples of exposed wiring in the machinery room. It is standard industry practice for wiring in ammonia machinery rooms to be installed in accordance with the National Electric Code (*See e.g., IIAR 2-2008, supra, § 13.1.7*) and for flammable and combustible materials not to be stored in ammonia machinery rooms. *See e.g., IIAR 2-2008, supra, § 13.1.3.1;*

iv. Pipe hangers associated with supporting ammonia piping within the machinery room were secured to other sections of ammonia piping. It is standard industry practice for the pipe hangers and supports to carry the weight of the piping as well as any other anticipated loads. *See e.g., IIAR 2-2008, supra, §§ 10.4 and 14.4; and,*

v. The compressor bypass pressure relief valves were past their five-year replacement dates. It is standard industry practice for pressure relief valves to be replaced at intervals not exceeding five years. *See e.g., IIAR Bull. 110, supra, § 6.5.4.*

vi. The Process at the Facility was not properly identified as an ammonia area and NFPA 704 signs indicating the presence of ammonia were not posted in the outdoor portion of the covered system. Standard industry practice is for refrigerating systems to be provided with approved informative signs, charts, and labels in accordance with NFPA 704 and hazards signs should be in accordance with the Internal Mechanical Code. *See e.g., IIAR 2-2008, supra, § 13.1.10.4 and Appendix L (Machinery Room Signage).*

vii. Labeling and tagging of components of the Process was sporadic and missing in some areas. The standard industry practice is for all piping to identify the use of the pipe, physical state of the refrigerant, the relative pressure, and the direction of flow. *See e.g., IIAR's 2-2008, supra, § 10.6; and IIAR Bull. 109, supra, § 4.7.6.*

viii. The ammonia refrigeration system machinery room at the Facility was in poor condition, including broken wall sections and an inappropriate door. Broken walls in a machinery room are inconsistent with industry standards for machinery room structural integrity. *See e.g., IIAR's 2-2008, supra, § 13.1.1.* The access door to the room did not meet RAGAGEP because it was not adequately labelled and lacked a tight-fitting seal, was not self-closing, and lacked any panic-type hardware. The standard industry practice is for doors in ammonia machinery rooms to be self-closing, tight-fitting fire doors. *See e.g., ASHRAE 15-2010, supra, §§ 8.11.2 and 8.12.*

d. Respondent failed to comply with the mechanical integrity requirements for the Process, including failure to establish a program to perform appropriate checks and inspections of the entire covered Process to ensure that equipment was installed properly and consistent with

design specifications and the manufacturer's instructions and RAGAGEP. Normal day-to-day maintenance and inspection was substantially lacking. Specific issues identified, include:

i. Components of the Process, including the intercooler, recirculator, and sections of piping had insulation and lagging that were in poor condition, which increases the potential for corrosion related problems. The standard industry practice is to inspect ammonia piping for damage to insulation, damage to lagging, and for corrosion and to make timely corrective actions. *See e.g., IIAR Bull. 109, § 4.7 and IIAR Bull. 110, supra, Appendix G—Typical Schedule for Inspection and Maintenance.*

e. Respondent developed written standard operating procedures to control the proper operations of the Process at the Facility. However, Respondent failed to comply with Program 3 operating procedure requirements, including failing to recertify standard operating procedures on an annual basis. For the July 2013 certification, ten standard operating procedures were not certified. In addition, at the time of the Inspection in 2014, Respondent failed to perform the required annual certifications for twenty-six standard operating procedures for 2014.

f. Respondent failed to comply with Program 3 training requirements for Respondent's employees. At the time of the Inspection, Respondent failed to produce any records documenting initial or refresher training of employees to perform routine maintenance on the Process or detailing what to look for during an inspection of the Process performed by Respondent's employees. Although Respondent documented some training, these training records did not include the means used to verify that the employees understood the listed training.

g. Respondent failed to comply with Program 3 contractor requirements, including failing to identify all contractors who perform work on or adjacent to the Process, and failing to maintain records to indicate that Respondent evaluated information regarding contractors' safety performances and programs. Although Respondent identified the contractor Northeast Distributors, Inc., Respondent failed to identify other contractors, including, but not limited to: Baker; Tanner; roofers; trash haulers; and any other general contractors who might be operating adjacent to the outside vehicle travel zone located near the Process.

h. Respondent failed to develop and implement an adequate emergency response program. Respondent had not coordinated with the local fire department, which is not adequately equipped to respond to any ammonia releases at the Facility. In addition, Respondent did not have in place appropriate mechanisms to notify emergency responders. Respondent's Emergency Response Plan and response protocols were not suitable for the Facility because the geographic region in which the Facility is located lacks a hazardous material response team and a release of ammonia could have substantial adverse impacts on the general public and the environment before a hazardous material response team could arrive from another region. Respondent's Emergency Response Plan had the following issues, including, but were not limited to:

- i. Failing to have adequate mechanisms to notify emergency responders or the public regarding accidental releases;
- ii. Failing to include primary or alternate evacuation routes in the facility's Extremely Hazardous Materials Facility Plan;

iii. Failing to account for the Facility's distance from appropriately equipped emergency responders. The local county emergency responders do not have a trained hazmat team, and the Facility lacks its own emergency responders who could respond to an ammonia release appropriately. The Facility's emergency response contractor is Clean Harbors, which is located approximately one hour away from the Facility in Bangor, ME, and does not have the capability to respond to an ammonia release requiring Level A response capabilities.

IV. VIOLATIONS

Count 1: Failure to Accurately Evaluate Offsite Consequences in Release Scenarios

32. Complainant realleges and incorporates by reference paragraphs 1 through 31.

33. Pursuant to 40 C.F.R. § 68.20, the owner or operator of a Program 3 process must prepare a worst-case release scenario analysis in accordance with 40 C.F.R. §§ 68.20 through 68.39.

34. Forty C.F.R. § 68.22 defines the parameters for the required offsite consequences analysis. Pursuant to § 68.22(e), when performing an offsite consequences analysis, the owner or operator of the Facility shall take surface roughness into account, specifying that either urban or rural topography shall be used for the surface roughness parameter. "Urban means that there are many obstacles in the area; obstacles include buildings or trees. Rural means there are no buildings in the immediate area and the terrain is generally flat and unobstructed."

35. Pursuant to 40 C.F.R. § 68.25, the worst-case release scenario analysis must examine several issues, including, but not limited to: the greatest distance in any direction to an endpoint

resulting from an accidental release of a regulated substance from a covered process under worst-case conditions; and a determination of the worst-case release quantity.

36. As described in Paragraph 31(a) above, Respondent failed to characterize the surface roughness of the area around the Facility accurately as rural, which resulted in underestimating the area that would be impacted by any ammonia releases from the Facility.

37. As described in Paragraph 31(a) above, Respondent's offsite consequences analysis under-represented the worst-case release quantity of ammonia from the Facility as 7,800 pounds rather than 14,500 pounds.

38. Accordingly, by failing to use the correct surface roughness parameter and by under-representing the worst-case release quantity of ammonia, Respondent failed to accurately evaluate offsite consequences in release situations, in violation of 40 C.F.R. §§ 68.20 through 68.39 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least July 2, 2004, the date of Respondent's initial 2004 RMP, to October 15, 2014.

Count 2: Failure to Adequately Identify, Evaluate, and Control Hazards

39. Complainant realleges and incorporates by reference paragraphs 1 through 38.

40. Pursuant to 40 C.F.R. § 68.67, the owner or operator of a Program 3 process is required, among other things, to perform an initial PHA on each covered process. The PHA must identify, evaluate and control the hazards involved in the process. The owner or operator must update the PHA every five years and when a major change in the process occurs. Additionally, the owner or operator must establish a system for addressing the recommendations identified in the PHA, including defining a schedule for completing the action items, taking the actions as soon as possible, and documenting the resolution of the recommendations.

41. As described in Paragraph 31(b) above, Respondent conducted a PHA; however, the PHA did not address all possible hazards to the Process system given the site characteristics, and Respondent did not take actions to correct identified hazards in a timely manner. The effectiveness of the PHA was substantially limited because Respondent did not plan for and complete all of the identified action items associated with the covered Process. Further, Respondent failed to identify and/or correct significant and easily identifiable hazardous conditions.

42. Also, as described in Paragraph 31(h), the PHA did not identify or address the hazard of having no hazardous material response capabilities available near the Facility to respond to a release.

43. By failing to adequately identify, evaluate, and control hazards, Respondent violated 40 C.F.R. § 68.67(c) and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least July 2, 2004, the date of Respondent's initial 2004 RMP, to October 15, 2014.

Count 3: Failure to Comply with Process Safety Information Requirements

44. Complainant realleges and incorporates by reference paragraphs 1 through 43.

45. Pursuant to 40 C.F.R. § 68.65, the owner or operator of a Program 3 process is required, among other things, to compile written process safety information before completing the PHA, in order to perform an adequate PHA and to enable proper maintenance of process equipment. This includes documenting information pertaining to the hazards of the RMP chemical in the process and information pertaining to the technology and equipment of the process. This compilation of process safety information enables appropriate identification and understanding of hazards posed by regulated substances in the process and the technology and

equipment of the process. In addition, the owner or operator must document that equipment complies with RAGAGEP, and that any equipment that was designed according to outdated standards is designed, maintained, and inspected, tested, and operated in a safe manner. 40 C.F.R. § 68.65(d)(2) and (3).

46. As described in Paragraph 31(c) above, Respondent failed to document that the Process equipment complies with applicable RAGAGEP or that any equipment that was designed according to outdated standards is designed, maintained, inspected, tested, and operated in a safe manner.

47. By failing to comply with process safety information requirements, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least July 2, 2004, the date of Respondent's initial 2004 RMP, to October 15, 2014.

Count 4: Failure to Comply with Mechanical Integrity Requirements for the Covered Process

48. Complainant realleges and incorporates by reference paragraphs 1 through 47 of this document.

49. Pursuant to 40 C.F.R. § 68.73, the owner or operator of a Program 3 process must establish and implement written procedures to maintain the ongoing integrity of certain process equipment and train employees accordingly. The owner or operator must inspect and test the equipment either in accordance with the manufacturer's recommendations and good engineering practices, or more frequently if needed based on prior operating experience. The owner or operator must also document the inspections or tests on process equipment, correct deficiencies,

ensure than any new equipment is installed properly, and ensure that maintenance materials and spare parts are suitable for the process application.

50. As described in Paragraph 31(d), at the time of the Inspection, Respondent failed to comply with the mechanical integrity requirements for the Process, including failing to establish a program to perform appropriate checks and inspections of the entire covered Process to ensure that equipment is installed properly and consistently with design specifications, the manufacturer's instructions, and RAGAGEP, and failing to correct deficiencies in equipment that are outside acceptable limits.

51. By failing to establish and implement a sufficient mechanical integrity program and by not correcting equipment deficiencies before further use or in a safe and timely manner, Respondent violated 40 C.F.R. § 68.73 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least the date of the Inspection, October 15, 2014.

Count 5: Failure to Comply with Program 3 Operating Procedures Requirements

52. Complainant realleges and incorporates by reference paragraphs 1 through 51 of this document.

53. Pursuant to 40 C.F.R. § 68.69, the owner or operator of a Program 3 process is required to develop and implement written operating procedures that provide instructions or steps for safely conducting activities associated with the covered process. These operating procedures must address steps for each operating phase, operating limits, safety and health considerations, and safety systems. The owner or operator must make these procedures available to employees involved in the process, keep them up-to-date with current practices, and certify annually that they are current.

54. As described in Paragraph 31(e), at the time of the Inspection, Respondent failed to comply with Program 3 operating procedure requirements, including failing to recertify standard operating procedures on an annual basis. For the July 2013 certification, ten standard operating procedures were not certified. In addition, at the time of the Inspection in 2014, Respondent failed to perform the required annual certifications for twenty-six standard operating procedures for 2014.

55. By failing to comply with the operating procedures requirements, Respondent violated 40 C.F.R. § 68.69 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least July 23, 2013 to October 15, 2014.

Count 6: Failure to Comply with Program 3 Training Requirements

56. Complainant realleges and incorporates by reference paragraphs 1 through 55 of this document.

57. Pursuant to 40 C.F.R. § 68.71, the owner or operator of a Program 3 process must train each employee involved in operating the process, provide those employees with refresher training at least every three years, and document such training and the employees' understanding of the training. Training documentation must record the date of the training and the means used to verify that employees understood the training.

58. As described in Paragraph 31(f), at the time of the Inspection, Respondent failed to produce any records documenting initial or refresher training of employees to perform routine maintenance on the Process or detailing what to look for during an inspection of the Process. Although Respondent documented some training, these training records did not include the means used to verify that the employees understood the listed training.

59. By failing to adequately train and record compliance with training requirements, Respondent violated 40 C.F.R. § 68.71 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least July 2, 2004, the date of Respondent's initial 2004 RMP, to October 15, 2014.

Count 7: Failure to Comply with Program 3 Contractor Requirements

60. Complainant realleges and incorporates by reference paragraphs 1 through 59 of this document.

61. Pursuant to 40 C.F.R. § 68.87, the owner or operator of a Program 3 process must take certain steps to ensure that contractors who work on or adjacent to the covered process do not inadvertently cause a chemical release. Those steps include evaluating information regarding the contractor's safety performance and programs when selecting a contractor; informing the contractor of known hazards relating to the contractor's work and the process; explaining the emergency response program to the contractor; developing and implementing safe work practices to control the entrance, presence, and exit of the contractor in covered process areas; and periodically evaluating the contractor's conformance with the contractor safety requirements of 40 C.F.R. § 68.87(c).

62. As described in Paragraph 31(g), at the Inspection, Respondent failed to comply with Program 3 contractor requirements, including failing to identify all contractors who perform work on or adjacent to the Process and failing to maintain records to indicate that Respondent evaluated information regarding contractors' safety performances and programs.

63. By failing to comply with Program 3 contractor requirements by not properly implementing its contractor program at the Facility, Respondent violated 40 C.F.R. § 68.87 and

Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least July 2, 2004, the date of Respondent's initial 2004 RMP, to October 15, 2014.

Count 8: Failure to Have an Adequate Emergency Response Program

64. Complainant realleges and incorporates by reference paragraphs 1 through 63 of this document.

65. Pursuant to 40 C.F.R. § 68.90, the owner or operator of a Program 3 process must comply with the emergency response program requirements of 40 C.F.R. § 68.95 unless such owner's or operator's employees will not be responding to accidental releases and various other requirements are met, including: (1) for a stationary source with any regulated toxic substance held in a process above the threshold quantity, the stationary source is included in the community emergency response plan developed under 42 U.S.C. 11003; (2) for a stationary source with only regulated flammable substances held in a process above the threshold quantity, the owner or operator has coordinated response actions with the local fire department; and (3) appropriate mechanisms are in place to notify emergency responders when there is a need for a response.

66. As described in Paragraph 31(h), at the time of EPA's Inspection, Respondent had not coordinated with the local fire department regarding the Facility and has not established appropriate mechanisms to notify emergency responders when there is a need for a response; therefore, 40 C.F.R. § 68.95 applies to Respondent's covered Process at the Facility.

67. Pursuant to 40 C.F.R. § 68.95, the owner or operator of a Program 3 process must develop and implement an emergency response program by: maintaining an emergency response plan; outlining procedures for using, inspecting, testing and maintaining response equipment; training employees on response procedures; and creating procedures to review and update the

emergency response plan to reflect current conditions at the Facility and to inform employees accordingly.

68. As described in Paragraph 31(h), Respondent failed to develop and implement an adequate emergency response program for the Process at the Facility. Respondent's Emergency Response Plan and response protocols were not suitable for the Facility because: Respondent did not have its own emergency response team but failed to make sure that local emergency responders could adequately respond. Local emergency responders are not equipped to respond to ammonia releases at the Facility, and Respondent's emergency response contractor is located one hour away from the Facility and does not have the capability to respond to an ammonia release requiring Level A response capabilities.

69. By failing to develop and implement an adequate emergency response program for the Process at the Facility, Respondent violated 40 C.F.R. §§ 68.90 and 68.95 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least July 2, 2004, the date of Respondent's initial 2004 RMP, to at least September 21, 2015.

V. PROPOSED CIVIL PENALTY

70. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and 7413(d), as amended, authorize EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between January 30, 1997 and March 15, 2004 are subject to up to \$27,500 per day of violation; violations that occurred between March 15, 2004 and January 12, 2009 are subject to up to

\$32,500 per day of violation; and violations that occurred thereafter are subject to up to \$37,500 per day of violation.

71. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted for inflation by the DCIA and 40 C.F.R. Part 19, prescribes a \$295,000 penalty limit for violations from January 12, 2009 through December 6, 2013, and a penalty limit of \$320,000 for violations thereafter, and a twelve-month duration limitation on EPA's authority to initiate an Administrative Penalty Order. However, these limitations may be waived where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty or a longer period of violation is appropriate for an administrative penalty action. EPA and the United States Department of Justice have determined that an administrative penalty action is appropriate in this case.

72. In determining the amount of the CAA penalty to be assessed, EPA will take into account the statutory factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e). These factors include 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, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require.

73. An appropriate penalty will be derived pursuant to the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" ("Enforcement Policy") dated June 2012. A copy of this policy is enclosed with this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case. When calculating penalties under the

Enforcement Policy, EPA takes into account the potential for harm for violating a particular Part 68 requirement and the extent of deviation of Respondent's conduct from the particular Part 68 requirement.

74. For penalty purposes, the duration of the violations varies by count, as specified below, for up to approximately 1,817 days total. This number of days could increase if Respondent is unable to document that it has corrected the violations. In light of the above-referenced findings, EPA seeks to assess civil penalties of up to \$37,500 per day for CAA violations occurring after January 12, 2009,¹ as follows:

a. Count 1: Failure to Accurately Evaluate Offsite Consequences in Release Scenarios in violation of 40 C.F.R. § 68.20 to 68.39 (at least 1,476 days of violation). The potential for harm of this violation is Moderate because Respondent's use of incorrect parameters for its analysis of offsite consequences of a release of ammonia from the Facility has the potential to affect the ability of the Facility to prevent or respond to a release. Respondent's use of the wrong parameter to characterize the topography of the Facility and the surrounding area, as urban rather than rural, caused Respondent to underestimate the geographic extent and number of people who might be affected by a release from the Facility. Furthermore, Respondent's worst-case release analysis assumed that a quantity of ammonia might be released from the Facility that is lower than the actual quantity of ammonia that Respondent reported was present at the Facility in its Tier II report. Using a lower quantity of ammonia further underestimated the potential offsite consequences of a release. Respondent's deviation from the

¹ EPA's computation of the days of violation for each count excludes periods subject to the statute of limitations.

40 C.F.R. § 68.20-68.39 requirements was Minor because Respondent satisfactorily completed the offsite consequences analysis for the Facility in other respects.

b. Count 2: Failure to Adequately Identify, Evaluate, and Control Hazards in violation of 40 C.F.R. § 68.67 (at least 1,476 days of violation). The potential for harm of this violation is Major because Respondent failed to identify and correct significant hazardous conditions in its PHA which has the potential to undermine the Facility's ability to prevent or respond to a release. The extent of deviation is Moderate because Respondent performed a PHA but failed to complete all required follow-ups and failed to identify all hazards.

c. Count 3: Failure to Comply with Process Safety Information Requirements in violation of 40 C.F.R. § 68.65 (at least 1,476 days of violation). The potential for harm of the violation is Major because failure to comply with process safety information requirements, including documenting that Process equipment conforms with RAGAGEP, and/or that equipment was designed according to outdated standards that are safe, has undermined the ability of the Facility to prevent or respond to a release. The deviation is Moderate because Respondent significantly deviated from the requirements by not complying with a substantial amount of RAGAGEP, but complied in some respects.

d. Count 4: Failure to Comply with Mechanical Integrity Requirements for the Covered Process in violation of 40 C.F.R. § 68.73 (at least 1 day of violation). The potential for harm of the violation is Major because failure to establish a program to perform appropriate checks and inspections of the entire covered Process to ensure that equipment is installed properly and consistently with RAGAGEP has undermined the ability of the Facility to prevent or respond to releases. The deviation is Moderate because, although Respondent hired an outside

contractor to perform major maintenance and repair on the covered Process, day-to-day maintenance and inspection at the Facility was substantially lacking.

e. Count 5: Failure to Comply with Program 3 Operating Procedures Requirements in violation of 40 C.F.R. § 68.69 (at least 449 days of violation). The potential for harm of the violation is Minor. A lack of focus on certifying standard operating procedures can cause careless operations and maintenance of the covered Process. The extent of deviation is Moderate. Although Respondent established standard operating procedures, the failure to recertify these procedures was a systematic problem at the Facility. The failure to regularly review methods for safely operating the Facility's Process creates a risk of undermining the Facility's ability to prevent or respond to releases.

f. Count 6: Failure to Comply with Program 3 Training Requirements in violation of 40 C.F.R. § 68.71 (at least 1,476 days of violation). The potential for harm of the violation is Moderate because the lack of proper training can have a significant effect on a Facility's ability to prevent or respond to releases. The extent of deviation is Moderate. Although Respondent had a training program, Respondent failed to train its employees to maintain the ongoing integrity of the Process equipment between contracted service calls. Many aspects of the equipment used in the Process were in poor condition.

g. Count 7: Failure to Comply with Program 3 Contractor Requirements in violation of 40 C.F.R. § 68.87 (at least 1,476 days of violation). The potential for harm of the violation is Moderate because the contractor program is an important element of the RMP management system intended to ensure the overall health and safety of both contractors and the general public. The extent of deviation is Moderate. Respondent established a contractor program, but

the program was not fully implemented to identify and address all contractors who might work on or adjacent to the Process.

h. Count 8: Failure to Have an Adequate Emergency Response Program in violation of 40 C.F.R. §§ 68.90 and 68.95 (at least 1,817 days of violation). The potential for harm of the violation is Major because failing to adequately prepare for and make arrangements for a timely response to a potential ammonia release has undermined the Facility's ability to respond to releases. The extent of deviation is Moderate. Although Respondent had an emergency response plan, the plan was not actionable because the Facility lacked its own emergency response team, Respondent failed to adequately communicate and coordinate with local emergency responders, and Respondent failed to plan for the Facility's distance from appropriately equipped emergency responders.

75. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty and explaining how the proposed penalty was calculated, as required by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule," 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"), a copy of which is enclosed with this Complaint.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

76. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22. Any request for a hearing must be included in Respondent's written

Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

77. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency—Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, Massachusetts 02109-3912

Respondent should also send a copy of the Answer and all other documents which Respondent files in this action to Maximilian Boal, the attorney assigned to represent EPA in this matter, at:


Maximilian Boal
Enforcement Counsel
U.S. Environmental Protection Agency—Region I
5 Post Office Square, Suite 100 (OES04-2)
Boston, Massachusetts 02109-3912

78. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing

Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with the Complaint.

VII. Informal Settlement Conference

79. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent is encouraged to contact Maximilian Boal, Enforcement Counsel, at (617) 918-1750 or at boal.maximilian@epa.gov, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference. Please note that a request for an informal settlement conference does not extend the thirty-day period within which a written Answer must be submitted to avoid default. Maximilian Boal, Enforcement Counsel, at the above address and telephone, has been designated to represent Complainant and is authorized to receive service of process in this action.



Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

9-30-15
Date

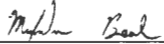
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:)	
)	
Penobscot McCrum, LLC)	Docket No. CAA-01-2015-0065
28 Pierce Street)	
Belfast, ME 04915)	CERTIFICATE OF SERVICE
)	
Respondent.)	
)	

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and One Copy (Hand-Delivered):	Wanda Santiago Regional Hearing Clerk U.S. EPA, Region I 5 Post Office Square, Suite 100 (ORA18-1) Boston, Massachusetts 02109-3912
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Copy, including 40 C.F.R. Part 22 and PCB Penalty Policy (Certified Mail, Return Receipt Requested):	Jay McCrum, Managing Partner Penobscot McCrum, LLC 28 Pierce Street Belfast, ME 04915
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Dated: <u>September 30, 2015</u>	 _____ Maximilian Boal Enforcement Counsel U.S. EPA, Region I 5 Post Office Square, Suite 100 (OES04-2) Boston, Massachusetts 02109-3912
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