

JUN 26 2019

EPA ORC /MS  
Office of Regional Hearing ClerkUNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

In the Matter of:

ISP Freetown Fine Chemicals, Inc.

MAR000009605

Proceeding under Section 3008(a) of the Resource  
Conservation and Recovery Act, U.S.C. § 6928(a)

Docket No. RCRA-01-2018-0062

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS  
COUNTS TWO THROUGH EIGHT FOR FAILURE TO STATE A CLAIM<sup>1</sup>**

The U.S. Environmental Protection Agency (“EPA”) filed its complaint in this action against Respondent ISP Freetown Fine Chemicals, Inc. (“ISP”) on September 25, 2018, and after a series of extensions, ISP’s response deadline was fixed at June 11, 2019. Two business days before that deadline, without prior notice, EPA amended its complaint.<sup>2</sup> An amended complaint replaces the original complaint. *See Connectu LLC v. Zuckerberg*, 522 F.3d 82, 91 (1st Cir. 2008). But the circumstances of this particular amended complaint are revealing.

Complaints are typically amended to add facts, claims, or parties. Here, however, EPA’s Amended Complaint shuffles around the *legal provisions* that are EPA’s alleged basis for its claims. EPA is not adding facts; it is adding and substituting *regulations* that were allegedly violated based on the same facts already alleged. The inescapable conclusion is that the legal citations in EPA’s original complaint were inapplicable, or at least incomplete.

For example, in six of its nine claims (Counts Two through Seven), the Amended Complaint cites, as the source of the alleged violation, a purportedly “renumbered” provision of

<sup>1</sup> The Amended Complaint also incorporates a Compliance Order. ISP also moves to dismiss the paragraphs of the Compliance Order associated with Counts Two through Eight. Am. Compl. ¶¶ 92, 94-100.

<sup>2</sup> The amendment extended ISP’s response deadline to June 26, 2019. *See* 40 C.F.R. § 22.14(c).

the Code of Federal Regulations in lieu of the provision cited in the original complaint. *See* Exhibit 1 (redlined Amended Complaint), ¶¶ 35, 44, 46, 50, 59, 64, 70, 77. To be clear, EPA’s new citation was not added in the Amended Complaint because the C.F.R. itself had been recently amended. In fact, EPA last modified these provisions in 2016, long before this action – and the modification was *not* a mere “renumbering,” as explained in more detail below. *See infra*, § II.A. Rather, the new citation was apparently added to EPA’s Amended Complaint to correct an obviously material error in the original complaint: the C.F.R. provision cited in the original September 2018 complaint had been repealed in 2016, effective 2017.

Similarly, in a seventh claim (Count Eight), the Amended Complaint grafts into the text citations to previously uncited regulatory provisions – 40 C.F.R. §§ 262.17 and 265.16 – not because new facts are alleged that trigger these provisions, but merely because EPA now alleges, without explanation, that these provisions also apply to the previously alleged facts. *See* Ex. 1, ¶¶ 79, 81. As discussed below, it is unclear both why these provisions apply at all, and why – if EPA thinks they do – the agency would not have included them in the original complaint.

***The amendment of a complaint to change the legal basis for its claims is a big red flag.*** Here, as explained in more detail below, EPA appears to have done so because most of its claims are founded on a basic and fatal legal error that the agency is now belatedly – and futilely – attempting to address in an Amended Complaint. That error, in brief, is that Counts Two through Eight are founded on parts of the RCRA regulatory scheme that did not apply to ISP at the time of the alleged violations. *Infra*, § II. And despite EPA’s efforts to substitute in new and different regulatory provisions in its Amended Complaint, these substitute citations are no more viable in this action than the originals. *Id.* Even with two bites at the apple, EPA has failed to identify a federal or state regulation that was allegedly violated in Claims Two through Eight.

## BACKGROUND

ISP owns and operates a facility in Assonet, Massachusetts (“Facility”), where it produces polymers that are used in everyday consumer health and beauty products, such as toothpaste, sunscreen, and skin creams. *See* ISP’s Answer to Am. Compl. (“Answer”) ¶¶ 13-14. The Facility includes eight storage units that are used “for solvents, acids, and reactants, which are used in batch chemical production.” Answer ¶¶ 17, 20.

EPA inspected the Facility on August 1, 2017. Answer ¶ 19. Five months later, on January 24, 2018, EPA issued an Early Warning Notice. Am. Compl. ¶ 26. On September 25, 2018, EPA filed its original complaint alleging RCRA violations, and amended it on June 7, 2019.

The Amended Complaint is primarily concerned with eight storage tanks and associated equipment at the Facility, which EPA alleges were subject to certain regulations under Subparts BB and CC of 40 C.F.R. Part 265 (“Subpart BB and CC”), part of the RCRA regulatory scheme. Am. Compl. ¶¶ 22, 27. Count Two alleges failure to inspect and monitor hazardous waste storage tanks and air emission control equipment under Subpart CC. *Id.* ¶¶ 34-44. Counts Three through Five allege the failure of labeling and monitoring of particular hazardous waste management equipment under Subpart BB. *Id.* ¶¶ 45-64. Count Six alleges a recordkeeping failure under Subpart BB. *Id.* ¶¶ 65-70. Count Seven alleges inadequate leak detection monitoring for tanks and equipment under Subparts BB and CC. *Id.* ¶¶ 71-77. Count Eight alleges a failure to train certain employees on the requirements of Subparts BB and CC. *Id.* ¶¶ 78-81.

These allegations, however, are based on citations to regulatory provisions that do not apply in this case. EPA’s cited basis for Counts Two through Seven is that Subparts BB and CC

apply “as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [renumbered as 40 C.F.R. § 262.17(a)(2)].” Am. Compl. ¶¶ 35, 44, 46, 50, 59, 64, 70, 77. The originally cited provision here – 40 C.F.R. § 262.34 – *has not been in effect since May 30, 2017*. See Hazardous Waste Generator Improvements Rule, 81 Fed. Reg. 85732, 85818 (Nov. 28, 2016) (removing and reserving 40 C.F.R. § 262.34 effective May 30, 2017). Accordingly, 40 C.F.R. § 262.34 did not exist at the time that EPA inspected the Facility (August 1, 2017), issued the Early Warning Notice (January 24, 2018), filed the original complaint (September 25, 2018), or filed the Amended Complaint (June 7, 2019). And the provision at 40 C.F.R. § 262.17 – added to these citations only in the Amended Complaint – does not apply either, because EPA explicitly made the new provision immediately applicable only in states, unlike Massachusetts, without final authorization for their base hazardous waste programs. See *infra*, § II.A. The provisions cited in Count Eight likewise do not apply to ISP, or do not require the actions that EPA alleges that ISP failed to take. *Infra*, § II.B.

## ARGUMENT

### I. A COMPLAINT THAT ALLEGES NO VIOLATION MUST BE DISMISSED.

This is a motion to dismiss for failure to state a claim upon which relief may be granted.

EPA’s regulations provide:

The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

40 C.F.R. § 22.20(a). A motion to dismiss brought under Section 22.20(a) is analogous to motions for dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *In the Matter of Asbestos Specialists, Inc.*, No. 92-3, 4 E.A.D. 819 (EAB, Oct. 6, 1993), 1993 WL 473845, at \*5 (Oct. 6, 1983). As such, although not binding in administrative proceedings, judicial

decisions construing Fed. R. Civ. P. 12(b)(6) “provide useful and instructive guidance in adjudicating a motion to dismiss under the Rules of Practice.” *In the Matter of Mercury Vapor Processing Tech., Inc., A/K/A River Shannon Recycling, and Laurence C. Kelly, Respondents*, No. RCRA-05-2010-0015, 2011 WL 3503522 (EPA ALJ), at \*3 (July 14, 2011); *see also In the Matter of: Elementis Chromium, Inc., F/K/A Elementis Chromium, L.P., Respondent*, No. TSCA-HQ-2010-5022, 2011 WL 1642801 (EPA ALJ), at \*4 (Mar. 25, 2011) (“decisions rendered regarding [Rule 12(b)(6)] may be looked to for guidance.”).

Motions to dismiss test a claim’s legal sufficiency. *Elementis Chromium*, 2011 WL 1642801, at \*4. Dismissal is proper when a claimant pleads factual content that, even if accepted as true, is insufficient to allow “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Mercury Vapor Processing Tech.*, 2011 WL 3503522, at \*2 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Applying case law under Rule 12(b)(6) to 40 C.F.R. § 22.20(a), administrative law judges have explained, “It is well established that dismissal is warranted for failure to state a claim when the plaintiff fails to lay out ‘direct or inferential allegations respecting all the material elements necessary to sustain recovery *under some viable legal theory.*’” *In the Matter of Bug Bam Product, LLC, Flash Sales, Inc., Respondents*, No. FIFRA-09-2009-0013, 2010 WL 1816755 (EPA ALJ), at \*1 (Apr. 23, 2010) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562 (2007)) (emphasis added).

When a complainant alleges violations of a non-existent or non-applicable regulation, “adequate grounds exist[] for the presiding [officer] to dismiss the complaint” under 40 C.F.R. § 22.20(a). *Asbestos Specialists*, 1993 WL 473845, at \*5.

## **II. COUNTS TWO THROUGH EIGHT ALLEGE VIOLATIONS OF REGULATIONS THAT ARE NOT APPLICABLE HERE.**

### **A. Counts Two through Seven are based on either a regulation that had been repealed, or its legally inapplicable successor provision.**

In EPA's original complaint, Counts Two through Seven each alleged violations of certain Subpart BB and CC regulations "as referenced by 40 C.F.R. § 262.34(a)(1)(ii)." *See* Ex. 1, ¶¶ 35, 44, 46, 50, 59, 64, 70, 77. But Section 262.34 had been removed effective May 30, 2017 – before the relevant events of this action. *See supra; see also* 81 Fed Reg. 85732, 85818. There can be no dispute that, as alleged in the original complaint, Counts Two through Seven failed for the most basic reason – the allegedly violated provision did not actually exist.

EPA attempted to fix this error in its Amended Complaint, by grafting into each of these six counts a reference to a new provision – 40 C.F.R. § 262.17(a)(2) – that was promulgated in the 2016 Hazardous Waste Generator Improvements Rule. Am. Compl. ¶¶ 35, 44, 46, 50, 59, 64, 70, 77. But the fix fails. When EPA issued that Rule in 2016, the agency explicitly stated that the changes were "promulgated under non-HSWA [Hazardous and Solid Waste Amendments] authority." 81 Fed. Reg. at 85801.<sup>3</sup> Rules adopted under non-HSWA authority are only immediately effective in states without final authorization of their base hazardous waste programs under RCRA. *Id.* ("Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs."). But Massachusetts *does* have such authorization. *See* Massachusetts: Final Authorization of State Hazardous Waste Management Program Revisions, 75 Fed. Reg. 35660, 35662 (June 23, 2010) (Massachusetts "received Final Authorization on January 24, 1985, effective February 7, 1985

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<sup>3</sup> For this reason, among others, 40 C.F.R. § 262.17(a)(2) is *not* a mere "renumbering" of § 262.34(a)(1)(ii), since EPA claimed in 1994 that the portion of the latter provision requiring compliance with Subparts BB and CC was promulgated under HSWA authority. *See* Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators, 59 Fed. Reg. 62896, 62909-10 (Dec. 6, 1994).

(50 FR 3344), to implement its base hazardous waste management program.”). Accordingly, EPA’s purported substitute legal authority in Counts Two through Seven of its Amended Complaint – the new provision 40 C.F.R. § 262.17(a)(2) – is not enforceable law in Massachusetts, and cannot be the basis of this enforcement action.

“[A]n agency decision that loses track of its own controlling regulations and applies the wrong rules in order to penalize private citizens can never stand.” *Caring Hearts Pers. Home Servs., Inc. v. Burwell*, 824 F.3d 968, 977 (10th Cir. 2016). In *Burwell*, the Center for Medicare and Medicaid Services (“CMS”) applied the wrong law when it denied a coverage claim, and cited to non-existent laws. *Id.* at 974-75. The Tenth Circuit explained that CMS appeared “unfamiliar with its own regulations” and that it was “unable to keep pace with its own frenetic lawmaking,” and vacated an administrative order based on application of defunct and inapplicable laws. *Id.* at 976. EPA is similarly failing to apply its own regulations properly, and Counts Two through Seven must be dismissed.

**B. Count Eight is based on several regulations that either did not apply to ISP or did not require the actions that EPA alleges were not taken.**

Similar flaws mar Count Eight, which alleges a failure to train personnel with respect to Subpart BB and CC compliance. Though Count Eight is ambiguous as to which provisions it alleges were violated, the claim variously references: (a) 40 C.F.R. § 262.17(a)(7); *see* Am. Compl. ¶ 79; (b) 310 C.M.R. § 30.341(1)(a)<sup>4</sup> (referencing 310 C.M.R. § 30.516(1)-(2)); *see id.* ¶¶ 79, 81; and (c) 40 C.F.R. § 265.16; *see id.* ¶¶ 79, 81. But none of these allegations are viable, because these provisions are either unenforceable against ISP or do not actually require the allegedly required conduct.

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<sup>4</sup> EPA actually cited to 310 C.M.R. § 341, which does not exist; the agency presumably meant § 30.341.

To take them one at a time: 40 C.F.R. § 262.17(a)(7) is just a few subparagraphs down in the C.F.R. from Section 262.17(a)(2), discussed above, and the former is unenforceable against ISP for the same reasons that the latter is unenforceable. *See supra*, § II.A.

Next, the Massachusetts regulation EPA cites – 310 C.M.R. § 30.341(1)(a), referencing 310 C.M.R. § 30.516(1)-(2) – contains no requirement for training with respect to the *federal* RCRA regulations at Subparts BB and CC. Although 310 C.M.R. § 30.341 does reference training requirements in 310 C.M.R. § 30.516, the latter provision lacks any mention of a requirement to train personnel to comply with Subparts BB and CC. *See* 310 C.M.R. § 30.516 (requiring training to ensure compliance with 310 C.M.R. § 30.000, which likewise does not include specific reference to Subparts BB or CC). As such, EPA’s allegation that Massachusetts’ regulations require training with respect to Subparts BB and CC is without merit.

Finally, 40 C.F.R. § 265.16 is part of the base federal hazardous waste management program under RCRA,<sup>5</sup> and Massachusetts has been authorized to implement its corresponding regulations *in lieu* of such federal RCRA regulations. *See* 75 Fed. Reg. at 35662 (“The Commonwealth of Massachusetts ... received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344), to implement its base hazardous waste management program.”); *see also* 42 U.S.C. § 6926(b) (providing that authorized state regulations operate “in lieu of” the corresponding federal regulations). When a state receives EPA authorization, “its standards supersede federal regulations,” and the corresponding federal regulations are “ineffective.” *AM Int'l. Inc. v. Datacard Corp.*, 106 F.3d 1342, 1350 (7th Cir. 1997). Therefore, Section 265.16 is unenforceable here.

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<sup>5</sup> Section 265.16 was promulgated in substantially its present form in the first major RCRA rulemaking on May 19, 1980, and thus is part of the base RCRA program. *See* Standards Applicable to Owners of Hazardous Waste Treatment, Storage, and Disposal Facilities, 45 Fed. Reg. 33154, 33235 (May 19, 1980).

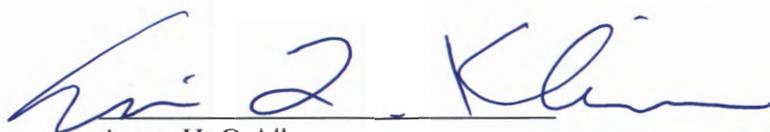
In short, neither federal nor state law in Massachusetts requires the training EPA alleges that ISP failed to do, and Count Eight must be dismissed.

### CONCLUSION

Counts Two through Eight in EPA's Amended Complaint must be dismissed **with prejudice** because EPA has failed to show a right to relief. The regulation that was the original cornerstone of EPA's allegations in Counts Two through Seven did not exist at the time of the alleged violation, and the new provision cited by EPA in its Amended Complaint is inapplicable in Massachusetts. Likewise, Count Eight relies on federal regulations that are not in effect here and state regulations that do not require the action – personnel training on Subparts BB and CC – that EPA alleges ISP failed to perform. The agency's Counts Two through Eight cannot stand.

DATED: June 25, 2019

Respectfully submitted,



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**EXHIBIT 1**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

_____	)	
In the Matter of:	)	
	)	
ISP Freetown Fine Chemicals, Inc.	)	Docket No. RCRA-01-2018-0062
238 South Main Street	)	
Assonet, MA 02702-1699	)	
	)	
MAR000009605	)	
	)	
Proceeding under Section 3008(a)	)	<b>AMENDED COMPLAINT, COMPLIANCE</b>
of the Resource Conservation and	)	<b>ORDER, AND NOTICE OF</b>
Recovery Act, 42 U.S.C. § 6928(a)	)	<b>OPPORTUNITY FOR HEARING</b>
_____	)	

**AMENDED COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY FOR HEARING**

**I. STATEMENT OF AUTHORITY**

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) is filed by the United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”) pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.
2. This Complaint alleges that ISP Freetown Fine Chemicals, Inc. (“Respondent”) has violated Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and federal and state hazardous waste regulations promulgated pursuant to RCRA.
3. The Notice of Opportunity for Hearing section of this Complaint describes Respondent’s

option to file an Answer to this Complaint and to request a formal hearing.

4. Notice of commencement of this action has been given to the Commonwealth of Massachusetts (the "Commonwealth") pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## **II. NATURE OF ACTION**

5. This is a federal enforcement action under RCRA, 42 U.S.C. §§ 6901-6987, to obtain compliance with RCRA and the hazardous waste regulations promulgated or authorized pursuant to RCRA, and to seek civil penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), for violations of RCRA and of regulations promulgated.

## **III. STATUTORY AND REGULATORY FRAMEWORK**

6. In 1976, Congress enacted RCRA (which amended the Solid Waste Disposal Act) in order to regulate the management of hazardous waste. Since then, Congress has enacted various amendments to RCRA, including the Hazardous and Solid Waste ("HSWA") Amendments of 1984.
7. Subtitle C of RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. See 42 U.S.C. §§ 6921-6939e. Pursuant to Subtitle C of RCRA, EPA has promulgated regulations that set forth standards and requirements applicable to generators of hazardous waste. These regulations are codified at 40 C.F.R. Parts 260 - 271.
8. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when EPA

deems the state program to be equivalent to the federal program.

9. EPA has authorized the Commonwealth to administer its own hazardous waste program. The federally-authorized Massachusetts regulations are codified in Title 310, Chapter 30 of the Code of Massachusetts Regulations (“C.M.R.”), 310 C.M.R. §§ 30.001, *et seq.*
10. The HSWA Amendments of 1984 enacted various new provisions in Section 3004 of RCRA, including Section 3004(n) of RCRA, 42 U.S.C. § 6921(n), that required EPA to promulgate air emission control regulations. EPA has promulgated these regulations at 40 C.F.R. Part 265, Subparts AA, BB and CC (“Subpart AA, BB and CC regulations”). EPA has not authorized the Commonwealth to administer the Subpart AA, BB and CC regulations.
11. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Thus, a violation of a requirement of an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), EPA may enforce violations of any requirement of Subtitle C of RCRA, including requirements of the federally-authorized Massachusetts hazardous waste program and of Subparts AA, BB and CC, by issuing administrative orders to assess a civil penalty and to require compliance.
12. Sections 3008(a) and (g) of RCRA provide that any person who violates any order or requirement of Subchapter C of RCRA shall be liable to the United States for a civil penalty in an amount of up to \$25,000 per day for each violation. Pursuant to the Debt

Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 *et seq.*, as well as 40 C.F.R. Part 19, the inflation-adjusted civil penalty for a violation of Subchapter III of RCRA is up to \$32,500 per day per violation for violations that occurred after March 15, 2004 and before January 13, 2009. Violations that occurred after January 13, 2009, and on or before November 2, 2015, are subject to penalties up to \$37,500 per day per violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note, Pub. L. 114-74, as well as 40 C.F.R. Part 19, the inflation-adjusted civil penalty for a violation of Subchapter III of RCRA increased to \$97,229 per day for each violation that occurred after November 2, 2015, and for which a penalty is assessed on or after January 15, 2018.

#### **IV. GENERAL ALLEGATIONS**

13. Respondent is a Delaware corporation doing business in the Commonwealth, and is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and 310 C.M.R. § 30.010.
14. Since 1998, Respondent has owned and operated a facility located at 238 South Main Street in Assonet, Massachusetts (“Facility”). At all times relevant to this Complaint, Respondent was an “owner” and/or “operator,” as defined in 40 C.F.R. § 260.10 and 310 C.M.R. § 30.010, of its Facility in Assonet, MA.
15. Respondent manufactures various polymers used in health and beauty products such as toothpaste, hair gels, hair sprays, skin creams and sunscreens, at the Facility, producing approximately 14 million pounds of products annually.

16. On or about January 29, 1998, pursuant to Section 3010 of RCRA, Respondent submitted a Notice of Hazardous Waste Activity to the Commonwealth, identifying itself as a large quantity generator (“LQG”) of hazardous waste.
17. Respondent’s Facility includes storage areas for hazards wastes, including solvents, acids and reactants with waste codes such as D001, D022, F002, F003 and F005, that are used in the its batch chemical production operations.
18. Respondent generates wastes at the Facility that are “hazardous wastes,” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5); 40 C.F.R. § 261.3; and 310 C.M.R. § 30.010, and is a “generator” of hazardous waste, as defined in 40 C.F.R. § 260.10 and 310 C.M.R. § 30.010.
19. On August 1, 2017, EPA Region 1 conducted a RCRA compliance inspection (“Inspection”) at the Facility.
20. At the time of the Inspection, Respondent maintained eight hazardous waste storage tanks at its Facility, as described below:
  - a. Tank S-716A is a 600-gallon tank used for collecting hazardous waste generated from Respondent’s steam stripper.
  - b. Tanks S-505, S-507, S-526, S-503A, S-545, and S-502A (the “Receiver Tanks”) are used for collecting hazardous waste generated from Respondent’s condensate receiver.
  - c. Tank S-535 is a 16,000-gallon tank used for collecting hazardous waste generated from a variety of Respondent’s operations, including from the transfer of

hazardous wastes collected in the Receiver Tanks, from the cleaning of Respondent's reaction vessels and from other processes at the Facility.

21. At the time of the Inspection, in addition to the eight hazardous waste tanks described in Paragraph 20 above, Respondent maintained the following equipment (hereafter, the "Equipment") at its Facility:
- a. Transfer hoses, valves, connectors, flex hoses, pumps and pipe manifolds used to transfer hazardous waste to and from Tank S-716A, to and from the Receiver Tanks, and to and from Tank S-535.
  - b. Transfer hoses and valves used in Respondent's Pilot Plant to transfer hazardous waste to and from variously-sized reactor vessels.
22. As set forth in 40 C.F.R. § 262.34(a)(1)(ii) ~~(ii)~~ [re-numbered as 40 C.F.R. § 262.17(a)(2)].<sup>1</sup> a generator may accumulate hazardous waste on-site for 90 days or less, without a permit, provided the waste is placed in tanks and the generator complies with, among other things, Subparts BB and CC of 40 C.F.R. Part 265 ("Subparts BB and CC").
23. Respondent accumulates hazardous waste on-site for 90 days or less, without a permit, places the waste in tanks, and is required to comply with Subparts BB and CC.
24. As set forth in 40 C.F.R. § 265.1064(g)(6), a generator that must comply with Subparts BB and CC must identify equipment that contains or contacts hazardous waste with an

<sup>1</sup> The conditions for exemption from permit requirements for a large quantity generator that accumulates hazardous waste are set forth in 40 C.F.R. § 262.17. 81 Fed. Reg. 85808 (November 28, 2016). These conditions, with respect to compliance with Subparts BB and CC, are identical to the longstanding prior requirements set forth in 40 C.F.R. 262.34(a)(1)(ii). Given the relatively recent renumbering of this provision, we cite to both regulations in this Amended Complaint for purposes of completeness.

organic concentration of at least 10 percent by weight.

25. All of the Equipment described in Paragraph 21 above, contained or contacted hazardous wastes with an organic concentration of at least 10 percent by weight.
26. On January 24, 2018, EPA Region 1 issued an Early Warning Notice to Respondent regarding potential RCRA violations identified at the Facility during EPA's RCRA Inspection. Since January 24, 2018, Respondent has provided other documents and information to EPA concerning hazardous waste management at the Facility.

#### **V. RCRA VIOLATIONS**

27. Based on EPA's Inspection, and other documents and information, Complainant has determined that Respondent has violated the requirements of RCRA and of regulations promulgated pursuant to RCRA, as alleged below in this Section.

#### **Count 1: Failure to Comply with Standard for the Storage of Hazardous Waste in Tanks**

28. Complainant realleges and incorporates by reference Paragraphs 1 - 27.
29. As required by 310 C.M.R. §§ 30.341(2), 30.694, 30.695, and 30.696, as referenced by 310 C.M.R. § 30.343(1), hazardous waste stored in tanks must be managed in accordance with a variety of requirements, including: requirements for labeling, inspections, record keeping and secondary containment.
30. At the time of the Inspection, EPA inspectors observed eight tanks at the Facility that were operating as hazardous waste storage tanks, including the six Receiver Tanks described in Paragraph 20 above.
31. With respect to the Receiver Tanks described in Paragraph 20, above:

- a. Respondent's employee, Eric Moran, told EPA inspectors that solvent waste generated from Respondent's condensers consists of hazardous waste which is then transferred to the Receiver Tanks.
  - b. Respondent's employee, Jay Daley, told EPA inspectors that solvent waste in the Receiver Tanks is not mixed with any other substances as part of Respondent's processes; and that
  - c. Respondent transfers all solvent waste held in the Receiver Tanks to its Tank S-535, which is the largest hazardous waste tank at the Facility.
32. At the time of the Inspection, Respondent failed to manage the Receiver Tanks described in Paragraph 20, above, as hazardous waste tanks. Respondent did not maintain secondary containment for the Receiver Tanks. Respondent did not label the Receiver Tanks with the words "Hazardous Waste," identify the type of hazardous waste being stored and the hazards associated with the hazardous waste, and the date upon which each period of accumulation began. Respondent did not perform inspections of the Receiver Tanks, and had no documentation of the performance of such inspections.
33. By failing to manage its Receiver Tanks as hazardous waste tanks, Respondent violated 310 C.M.R. §§ 30.341(2), 30.694, 30.695, and 30.696, as referenced by 310 C.M.R. § 30.343(1).

**Count 2: Failure to Comply with Hazardous Waste Tank  
Air Emission Standards (Subpart CC)**

34. Complainant realleges and incorporates by reference Paragraphs 1 -33.
35. A generator that accumulates hazardous waste in tanks on-site for 90 days or less,

without a permit, must comply with the requirements of Subpart CC of 40 C.F.R. Part 265 (“Subpart CC”). 40 C.F.R. § 262.34(a)(1)(ii)-) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

36. As provided in 40 C.F.R. § 265.1083(b) of Subpart CC, a facility shall control air pollutant emissions from each hazardous waste management unit in accordance with the applicable standards specified in § 265.1085 through § 265.1088 of Subpart CC.
37. Section 265.1085(c)(4) of Subpart CC requires a visual inspection of air emission controls devices, including the fixed roof and its closure devices, to check for defects that could result in air pollution emissions.
38. Section 265.1089(a) of Subpart CC requires the inspection and monitoring of air emission control equipment used to comply with Subpart CC in accordance with the applicable requirements specified in § 265.1085 through § 265.1088 of Subpart CC.
39. Section 265.1089(b) of Subpart CC requires the development and implementation of a written plan and schedule for performance of the inspections and monitoring required by 40 C.F.R. § 265.1089(a).
40. Section 265.1090(a) of Subpart CC requires record keeping and record preservation for the information specified in that section, as applicable to the facility. Except for air emission control equipment design documentation and information, records required by that section shall be maintained for a minimum of three years. Air emission control equipment design documentation shall be maintained until the air emission control equipment is replaced or otherwise no longer in service.

41. Section 265.1090(b) of Subpart CC requires preparation and maintenance of records for each tank using air emission controls, including a record of each tank inspection performed.
42. At the time of the Inspection, EPA inspectors observed eight tanks at the Facility that were operating as hazardous waste storage tanks, as described in Paragraphs 20 above.
43. At the time of the Inspection, Respondent's employee, Eric Morin, told EPA inspectors that he was unaware of the Subpart CC regulations and requirements, and that Respondent did not have any documents, inspection plans or inspection records documenting compliance with Subpart CC for any of the eight hazardous waste tanks at the Facility.
44. By failing to inspect, monitor, and document inspections of its hazardous waste storage tanks and air emission control equipment, Respondent violated Subpart CC of 40 C.F.R. Part 265, including Sections 265.1083(b), 265.1085(c)(4), 265.1089(a) and (b) and 265.1090(a) and (b), as referenced by 40 C.F.R. § 262.34(a)(1)(ii)-) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 5: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Labeling Subpart BB Equipment**

45. Complainant realleges and incorporates by reference Paragraphs 1 - 4544.
46. A generator that accumulates hazardous waste in tanks on-site for 90 days or less, without a permit, must comply with the requirements of Subpart BB of 40 C.F.R. Part 265 ("Subpart BB"). 40 C.F.R. § 262.34(a)(1)(ii)-) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

47. Pursuant to 40 C.F.R. § 265.1050(c), each piece of equipment to which the Subpart BB regulations apply shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.
48. The Equipment described in Paragraph 21 above, contained or contacted hazardous wastes with organic concentrations of at least 10 percent by weight, and is subject to the requirements of Subpart BB.
49. At the time of the Inspection, EPA inspectors observed that the Equipment described in Paragraph 21 above, was not marked in such a manner that it could be distinguished readily from other pieces of equipment.
50. By failing to label the Equipment described in Paragraph 21 above, in such a manner that it could be distinguished readily from other pieces of equipment, Respondent violated 40 C.F.R. § 265.1050(c), as referenced by 40 C.F.R. § 262.34(a)(1)(ii-) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 4: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Monitoring Valves in Light Liquid Service, Gas/Vapor Service, Pumps and Flanges.**

51. Complainant realleges and incorporates by reference Paragraphs 1 - 50.
52. Pursuant to 40 C.F.R. § 265.1052(a)(1), each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 265.1063(b).
53. Pursuant to 40 C.F.R. § 265.1052(a)(2), each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

54. Pursuant to 40 C.F.R. § 265.1057(a), each valve in light liquid and gas/vapor service shall be monitored monthly to detect leaks by the methods specified in § 265.1063(b), and shall comply with certain options for the continued monitoring of such valves.
55. Pursuant to 40 C.F.R. § 265.1058(a), flanges and other connectors shall be monitored within 5 days by the method specified in § 265.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.
56. The Equipment described in Paragraph 21 above, was used in light liquid and gas/vapor service; contained or contacted hazardous wastes with organic concentrations of at least 10 percent by weight; and is subject to the requirements of Subpart BB.
57. At the time of the Inspection, Respondent had no records documenting performance of inspections or monitoring of that portion of the Equipment that consisted of transfer hoses, valves, connectors, flex hoses, pumps and pipe manifolds that was used to transfer hazardous waste to and from the Receiver Tanks, as well as those transfer hoses and valves used in Respondent's Pilot Plant to transfer hazardous waste to and from variously-sized reactor vessels.
58. At the time of the Inspection, Respondent had no records documenting that the equipment described in Paragraph 57 above, was exempt from Subpart BB requirements because it was used for less than 300 hours per year as provided by the exemption set out in 40 C.F.R. § 1064(g)(6).
59. By failing to monitor the equipment described in Paragraph 57 above, Respondent violated Subpart BB of 40 C.F.R. Part 265, including Sections 265.1052(a)(1) and (2),

265.1057(a) and 265.1058(a), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 5: Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Open-Ended Valves and Lines**

60. Complainant realleges and incorporates by reference Paragraphs 1 - 59.

61. Pursuant to 40 C.F.R. § 265.1056, among other things:
- (a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.
  - (2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.
62. At the time of the Inspection, there were three open-ended lines at the Facility: (a) the draw line for Tank S-716A; (b) the feed line for Tank S-716A; and (c) the manifold line for Receiver Tank S-545.
63. At the time of the Inspection, none of the open-ended lines in listed in Paragraph 62 above, was sealed, in use, or equipped with a second valve.
64. By having three open-ended lines, Respondent violated 40 C.F.R. § 265.1056(a) – (c), as referenced by 40 C.F.R. § 262.34(a)(1)(ii-). **[re-numbered as 40 C.F.R. § 262.17(a)(2)].**

**Count 6: Failure to Comply with Hazardous Waste Air Emission Standards  
(Subpart BB) for Maintaining Records**

65. Complainant realleges and incorporates by reference Paragraphs 1 - 65.
66. Pursuant to 40 C.F.R. § 265.1064(a):
- (1) A facility shall comply with the recordkeeping requirements of this section.
  - (2) A facility of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.
67. Pursuant to 40 C.F.R. § 265.1064(b), a facility must record the following information in its records:
- (1) For each piece of equipment to which Subpart BB applies:

- (i) Equipment identification number and hazardous waste management unit identification.
- (ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).
- (iii) Type of equipment (e.g., a pump or pipeline valve).
- (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment.
- (v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).
- (vi) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

68. Pursuant to 40 C.F.R. § 265.1064(g), the following information pertaining to all equipment subject to the requirements in §§265.1052 through 265.1060, among other things, shall be recorded in a log that is kept in the facility's records:

- (1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.
- (2) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

69. At the time of the Inspection, Respondent had no documentation concerning that portion of the Equipment described in Paragraph 21 above that consisted of transfer hoses, valves, connectors, flex hoses, pumps and pipe manifolds that was used to transfer hazardous waste to and from the Receiver Tanks, as well as transfer hoses and valves used in Respondent's Pilot Plant to transfer hazardous waste to and from variously-sized reactor vessels.

70. By failing to maintain records for the equipment described in Paragraph 69 above,

Respondent violated 40 C.F.R. §§ 265.1064(a), (b), and (g), as referenced by 40 C.F.R. § 262.34(a)(1)(ii). [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 7: Failure to Comply with Subpart BB and CC**  
**Air Monitoring Methods**

71. Complainant realleges and incorporates by reference Paragraphs 1 - 70.
72. Pursuant to 40 C.F.R. §§ 265.1063(a) and 265.1084(d), leak detection monitoring for the purpose of compliance with the RCRA air emissions standards of Subparts BB and CC must be conducted in accordance with the procedures specified in Method 21, 40 C.F.R. Part 60, Appendix A.
73. Method 21 requires documentation, among other things, of the type of gas in use, the concentration, the lot number, expiration date and response time for the instrument in use.
74. Under Method 21, the relevant calibration standard for facilities that must comply with Subparts BB and CC is set forth in Sections 265.1063(b)(4) and 265.1084(d) of 40 C.F.R. Part 265.
75. Pursuant to 40 C.F.R. §§ 265.1063(b)(4) and 265.1084(d), calibration gases for tanks and monitoring equipment shall be: (i) zero air (less than 10 parts per million of hydrocarbon in air) and (ii) a mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 parts per million methane or n-hexane.
76. At the time of the Inspection, Respondent's Standard Operating Procedure ("SOP") for monitoring tanks and equipment failed to list the type of calibration gas, the response time of each instrument used, and the lot number and the expiration date of the calibration gas in use at the Facility. Respondent's SOP and calibration records listed

the calibration gas concentration in use at the Facility as 500 parts per million, and failed to use the proper concentration of approximately, but less than, 10,000 parts per million, as required by Sections 265.1063(b)(4) and 265.1084(d) of 40 C.F.R. Part 265.

77. By performing inadequate leak detection monitoring for its tanks and equipment, Respondent violated 40 C.F.R. §§ 265.1063(a) and (b), and 265.1084(d), as referenced by 40 C.F.R. § 262.34(a)(1)(ii). [re-numbered as 40 C.F.R. § 262.17(a)(2)].

**Count 8: Failure to Have an Adequate Training Program**

78. Complainant realleges and incorporates by reference Paragraphs 1 – 77.

~~79.~~ Pursuant to As set forth in 40 C.F.R. § 262.17(a)(7) and 310 C.M.R. § 30.516(1) and (2), as referenced by 310 C.M.R. § 341(1)(a), a generator may accumulate hazardous waste on-site for 90 days or less, without a permit, provided the generator complies with, among other things, a requirement that all facility management personnel assigned to manage hazardous waste ~~must~~ complete a training program that teaches them to perform their duties in a way that ensures the facility's compliance with RCRA. The program must be directed by a person trained in hazardous waste management procedures and must include instruction in hazardous waste management procedures relevant to the position in which the employee is employed. Personnel may not work in unsupervised positions until they have such training, and they must receive it within six months of starting their position. They must receive annual training refresher courses. A large

79. ~~quantity generator must comply with these~~ See also 40 C.F.R. § 265.16 (training requirements, as referenced by 310 C.M.R. § 30.341(1)(a) for treatment, storage and

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disposal facilities).

80. At the time of the Inspection, Respondent's employee, Eric Morin, told EPA inspectors that Respondent's employee, William Cobb, conducts all Subpart BB leak detection monitoring for Respondent. Mr. Morin also reported that Mr. Cobb had not had any RCRA air emission training; and no training on the flame ionization detector ("FID") equipment that Respondent uses for monitoring. Mr. Morin was completely unaware of Subpart CC regulations and requirements.
81. By failing to ensure that Respondent's employee assigned to perform all Subpart BB leak detection monitoring, and Subpart CC monitoring, was trained to ensure the Facility's compliance with RCRA, Respondent ~~violated~~failed to comply with all the conditions for exemption and therefore was subject to the operating requirements in 40 C.F.R. Part 265. The failure to adequately train all facility personnel is a violation of 40 C.F.R. § 265.16; and 310 C.M.R. § 30.516(1) and (2), as referenced by 310 C.M.R. § 30.341(1)(a).

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**Count 9: Failure to Conduct and Document Daily Inspections of Hazardous Waste Tanks**

82. Complainant realleges and incorporates by reference Paragraphs 1 - 81.
83. Pursuant to 310 C.M.R. § 30.696, as required by 310 C.M.R. § 30.343(1)(f), daily inspections of hazardous waste tanks must be conducted and documented.
84. At the time of the Inspection, EPA inspectors reviewed Respondent's inspection logs for the hazardous waste tanks along with associated records. Specifically, EPA inspectors reviewed daily inspection logs for the years 2015, 2016 and 2017.
85. EPA inspectors found no logs documenting inspections for Tank S-716A on the

following dates in the year 2017:

March 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, and 30;

April 13, 15, 16, 22, and 23; and

May 13, 14, 16, 17, 18, 19, 20, 21, and 22.

86. By failing to perform daily inspections of Tank S-716A on the dates indicated in Paragraph 85 above, Respondent violated 310 C.M.R. § 30.696, as required by 310 C.M.R. § 30.343(1)(f).

**VI. PROPOSED PENALTIES  
AND PAYMENT INSTRUCTIONS**

87. In determining the amount of any penalty to be assessed, Section 3008(a) of RCRA requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's RCRA Civil Penalty Policy, dated June 2003. A copy of the Penalty 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.
88. By this Complaint, Complainant seeks to assess Respondent a total civil penalty of \$ 203,792. The calculation of the proposed penalty is explained in detail in Attachment I to this Complaint, and is summarized as follows:

1. Failure to Comply with Standards for the Storage of Hazardous Wastes in Tanks: \$ 24,364
2. Failure to Comply with Hazardous Waste Tank Air Emission Standards (Subpart CC): \$ 66,229
3. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Labeling Subpart BB Equipment: \$ 9,869
4. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Monitoring Valves in Light Liquid Service and Gas/Vapor Service, Pumps and Flanges: \$ 26,689
5. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) For Open-Ended Valves and Lines: \$ 6,766
6. Failure to Comply with Hazardous Waste Air Emission Standards (Subpart BB) for Maintaining Records: \$ 26,689
7. Failure to Comply with Subpart BB and CC Air Monitoring Methods: \$ 29,654
8. Failure to Have an Adequate Training Program: \$ 6,766
9. Failure to Conduct and/or Document Daily Inspections of Hazardous Waste Tanks: \$ 6,766

TOTAL PROPOSED PENALTY: \$ 203,792

89. To pay a penalty under the **Quick Resolution** provisions of the Consolidated Rules at 40 C.F.R. 22.18(a), or to otherwise make a penalty payment to resolve this action, Respondent shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," and referencing the title of this action and the RCRA case docket number (RCRA-01-~~2017-0007~~2018-0062). The check shall be sent via regular \_\_\_\_\_

mail to the following address:

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

90. If Respondent sends the check via express mail, the following address shall be used:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
phone 314-418-4087

91. Respondent shall send a notice of the penalty payment and a copy of the check to:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
Mail code ~~ORA-18-1ORC 04-6~~  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

and

Audrey Zucker  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
Mail code ~~OES04-1ORC 04-2~~  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

#### **VII. COMPLIANCE ORDER**

92. Based on the foregoing findings, Respondent is hereby ORDERED to achieve and maintain compliance with all applicable requirements of Subtitle C of RCRA and the hazardous regulations promulgated or authorized thereunder, including Subparts BB

and CC. Respondent is hereby ordered to achieve and maintain compliance with all applicable requirements of RCRA, 40 C.F.R. Part 260 *et seq.* and 310 C.M.R. 30.100 *et seq.* Specifically, Respondent shall take all actions required by Paragraphs 93 - 102 below.

93. Within 30 days of receipt of this Complaint, Respondent shall comply with hazardous waste tank standards, in accordance with the requirements of 310 C.M.R.

§§ 30.341(2), 30.694, 30.695, and 30.696, as referenced by 310 C.M.R § 30.343(1).

94. Within 30 days of receipt of this Complaint, Respondent shall comply with Subpart CC requirements for the Receiver Tanks described in Paragraph 20 above.

Specifically, Respondent shall comply with the requirements of 40 C.F.R.

§ 265.1083(b), as referenced by 40 C.F.R. § 262.34(a)(1)(ii); re-numbered as 40

C.F.R. § 262.17(a)(2); 40 C.F.R. § 265.1085 (c)(4), as referenced by 40 C.F.R. §

262.34(a)(1)(ii); re-numbered as 40 C.F.R. § 262.17(a)(2); 40 C.F.R. § 265.1089(a)

and (b), as referenced by 40 C.F.R. § 262.34(a)(1)(ii); re-numbered as 40 C.F.R. §

262.17(a)(2); and 40 C.F.R. § 265.1090(a) and (b), as referenced by 40 C.F.R. §

262.34(a)(1)(ii); re-numbered as 40 C.F.R. § 262.17(a)(2), by: (a) inspecting air

emission control equipment for defects; (b) developing and implementing a written plan for performing inspection and monitoring of air emission control equipment;

(c) recording information pertaining to air emission control equipment design; and (d)

maintaining records for each inspection of air control emission equipment.

95. Immediately upon receipt of this Complaint, Respondent shall mark each piece of equipment subject to Subpart BB requirements in such a manner that it can be distinguished readily from other pieces of equipment in accordance with the requirements of 40 C.F.R. § 265.1050(c), as referenced by 40 C.F.R.

~~§ 262.34(a)(1)(ii-)~~ [re-numbered as 40 C.F.R. § 262.17(a)(2)].

96. Immediately upon receipt of this Complaint, Respondent shall comply with hazardous waste air emission standards (Subpart BB) for valves in light liquid service, gas/vapor service, pumps and flanges, in accordance with the requirements of 40 C.F.R.

§ 265.1052(a)(1) and (a)(2), 40 C.F.R. § 265.1057(a), 40 C.F.R. § 265.1058(a), and 40 C.F.R. § 265.1061, as referenced by 40 C.F.R. ~~§ 262.34(a)(1)(ii-)~~ [re-numbered as 40 C.F.R. § 262.17(a)(2)].

97. Immediately upon receipt of this Complaint, Respondent shall provide caps, flanges, or plugs for open valves, lines and hoses utilized in gas/vapor service or in light liquid service, in accordance with the requirements of 40 C.F.R. § 265.1056(a)-(c), as

referenced by 40 C.F.R. ~~§ 262.34(a)(1)(ii-)~~ [re-numbered as 40 C.F.R. § 262.17(a)(2)].

98. Immediately upon receipt of this Complaint, Respondent shall begin complying with Subpart BB's recordkeeping requirements in accordance with 40 C.F.R.

§ 265.1064(a), (b), and (g), as referenced by 40 C.F.R. § 262.34(a)(1)(ii) ~~(ii)~~ [re-numbered as 40 C.F.R. § 262.17(a)(2)].

99. Immediately upon receipt of this Complaint, Respondent shall comply with Method 21 by using the proper calibration chemicals and maintaining adequate records in conducting its RCRA emission tests in accordance with the requirements of 40 C.F.R. § 262.34(a)(1)(ii) ~~(ii)~~ [re-numbered as 40 C.F.R. § 262.17(a)(2)], which references 40 C.F.R. § 265.1063(a) and (b), and 40 C.F.R. § 265.1084(d), which reference 40 C.F.R. Part 60, Appendix A.
100. Within 30 days of receipt of this Complaint, Respondent shall ensure that that all site personnel assigned to manage hazardous wastes have completed a training program that teaches them to perform their duties in a way that ensures the Facility's compliance with RCRA, in accordance with 40 C.F.R. § 265.16; and 310 C.M.R. § 30.516(1) and (2), as referenced by 310 C.M.R. § 30.341(1)(a).
101. Immediately upon receipt of this Complaint, Respondent shall ensure that all inspections of hazardous waste tanks have been completed in a way that ensures the Facility's compliance with RCRA, in accordance with 310 C.M.R. § 30.696, as referenced by 310 C.M.R. § 30.343(1)(f).
102. In addition to achieving and maintaining compliance as ordered in paragraphs 93 through 101, Respondent is hereby ORDERED to achieve and maintain compliance

with all applicable requirements of Subtitle C of RCRA and the hazardous regulations promulgated or authorized thereunder, including Subparts BB and CC for applicable tanks and equipment associated with the Cryogenic Condensation Vapor Recovery Units (VRUs) at Respondent's Facility.

103. Within sixty-five (65) days of receipt of this Complaint, Respondent shall submit to Complainant written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in Paragraphs 93 - 102 above. Any notice of noncompliance required under this Paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance shall in no way excuse the noncompliance.

104. Respondent shall submit the above required information and notices to:

Audrey Zucker  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square  
Suite 100, Mail Code ~~OES04-1~~ORC 04-2  
Boston, MA 02109-3912  
[Zucker.audrey@epa.gov](mailto:Zucker.audrey@epa.gov)

105. If Respondent fails to comply with the requirements of this Compliance Order, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for further enforcement action in which EPA may seek civil penalties of up to \$ 58,562 for each day of continued noncompliance with the Order.

106. Upon receipt of a compliance order issued under RCRA Section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, once it is final and reviewable pursuant to RCRA Section 3008(b) and 40 C.F.R. Part 22.

**VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

107. As provided by Section 3008(b) of RCRA, Respondent has the right to request a hearing on the issues raised in this Complaint. To request a hearing, Respondent must file a Written Answer with the Regional Hearing Clerk in accordance with the requirements of 40 C.F.R. § 22.15 within thirty (30) days of Respondent's receipt of this Complaint. Any such hearing will be conducted in accordance with the Consolidated Rules set out at 40 C.F.R. Part 22 (attached).

108. Respondent's Answer shall be filed with the Regional Hearing Clerk at the following address:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100, Mail Code ~~ORA18-ORC 04-6~~  
Boston, MA 02109-3912

109. Respondent shall serve copies of Answer and any subsequent pleadings that Respondent files in this action to EPA Region 1's enforcement counsel for this matter,

who is authorized to receive service for Complainant at the following address:

Audrey Zucker  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square  
Suite 100, Mail Code ~~OES04-3~~ORC 04-2  
Boston, MA 02109-3912  
[Zucker.audrey@epa.gov](mailto:Zucker.audrey@epa.gov)

**X. OPPORTUNITY FOR ELECTRONIC FILING AND SERVICE**

110. Pursuant to 40 C.F.R. §§ 22.5(a)(1) and (b)(2), and subject to certain conditions and limitations, the EPA Region 1 Regional Judicial Officer has authorized the use of electronic mail for filing or service in addition to those methods already authorized in the Consolidated Rules. See Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer, dated October 9, 2014 (copy attached). According to the above-referenced Standing Order, the parties must confer and reach agreement regarding acceptable electronic addresses and other logistical issues prior to utilizing electronic service.

**XI. DEFAULT ORDER**

111. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations.

## XII. SETTLEMENT CONFERENCE

112. Respondent may confer informally with EPA Region 1 regarding a potential settlement of this action. Any such settlement would be made final by the issuance of a written Consent Agreement and Final Order by the EPA Region 1 Regional Judicial Officer.

113. Please note that a request for an informal settlement conference does not extend the thirty (30) day period for filing a written Answer. To request such a conference,

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Respondent's legal counsel may contact Audrey Zucker, Enforcement Counsel, at  
(617) 918-1788.

~~Joanna Jerison~~ Karen McGuire  
Legal Director, Enforcement Manager and Compliance Assurance Division  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

\_\_\_\_\_  
Date