



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 29 2006

REPLY TO THE ATTENTION OF:  
AE-17J

Certified Mail  
Return Receipt Requested

Julius Essenburg, President  
Holland Terminal, Inc.  
630 Ottawa Avenue  
Holland, Michigan 49423

Re: In the Matter of Holland Terminal, Inc.  
CAA Docket No. **CAA-05-2006-0038**

Dear Mr. Essenburg:

I have enclosed a complaint filed against Holland Terminal, Inc. (Holland Terminal), under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of R336.1910 and R336.1604(2)(a) of the federally enforceable state implementation plan for Michigan.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Michael R. Berman, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-6837.

Sincerely

A handwritten signature in cursive script, appearing to read "Cheryl Newton".

Cheryl Newton, Acting Director  
Air and Radiation Division

cc: Heidi Hollenbach, District Supervisor, Grand Rapids District

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. CAA-05-2006-0038  
)  
Holland Terminal, Inc. ) Proceeding to Assess a Civil  
Holland, Michigan ) Penalty under Section 113(d)  
) of the Clean Air Act,  
Respondent. ) 42 U.S.C. § 7413(d)  
)  
)

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Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Holland Terminal, Inc. (Holland Terminal), a corporation doing business in Michigan.

Statutory and Regulatory Background

4. On May 31, 1972, U.S. EPA approved R336.1910 as part of the federally enforceable state implementation plan (SIP) for Michigan. 37 Fed. Reg. 10842, (May 31, 1972). On May 6, 1980, R336.1910 was revised and became federally effective. 45 Fed. Reg. 29790, (May 6, 1980).

5. R336.1910 requires that an air-cleaning device be installed, maintained, and operated in a satisfactory manner and in accordance with the Michigan SIP and existing laws.

6. On July 26, 1982, U.S. EPA approved R336.1101 as part of the federally enforceable Michigan SIP. 47 Fed. Reg. 32116, (July 26, 1982). On February 28, 1989 and June 11, 1992, R336.1101 was revised. 54 Fed. Reg. 8354 (February 28, 1989) and 57 Fed. Reg. 24752 (June 11, 1992). On July 13, 1992, the latest revision of R336.1101 became federally effective.

7. R336.1101 defines "air cleaning device" as air pollution control equipment.

8. R336.1101 defines "air pollution control equipment" as any method, process, or equipment that removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.

9. R336.1101 defines "air contaminant" as a dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof.

10. On July 26, 1982, U.S. EPA approved R336.1604 as part of the federally enforceable Michigan SIP. 47 Fed. Reg. 32116, (July 26, 1982). On December 29, 2005 and June 1, 2006, R336.1604 was revised. 70 Fed. Reg. 77113, (December 29, 2005) and 71 Fed. Reg. 31093, (June 1, 2006). On July 3, 2006, the latest revision of R336.1604 became federally effective.

11. R336.1604(2) applies to the storage of organic compounds having a true vapor pressure of more than 1.5 psia, but less than 11 psia, in existing fixed roof stationary vessels of more than 40,000 gallon capacity and requires that all openings, except stub drains, in any stationary vessel subject to the provisions of this rule shall be equipped with covers, lids, or seals such that all of the following conditions are met: (a) The cover, lid, or seal is in the closed position at all times, except when in actual use; (b) Automatic bleeder vents are closed at all times, except when the roof is floated off, or landed on, the roof leg supports; and (c) Rim vents, if provided, are set at the manufacturer's recommended setting or are set to open when the roof is being floated off the roof leg supports.

12. On April 13, 1982, U.S. EPA approved R336.1115 as part of the federally enforceable Michigan SIP. 47 Fed. Reg. 15810, (April 13, 1982). On July 26, 1982, R336.1115 was revised. 47 Fed. Reg. 32116, (July 26, 1982). On August 25, 1982, R336.1115 became federally effective.

13. R336.1115 defines "organic compound" as any compound of carbon or mixture of such compounds, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, boron carbide, silicon carbide, ammonium carbonate, ammonium bicarbonate, methane, and ethane.

14. On July 26, 1982, U.S. EPA approved R336.1120 as part of the federally enforceable Michigan SIP. 47 Fed. Reg. 32116, (July 26, 1982). On February 24, 2003, R336.1120 was revised. 68 Fed. Reg. 8550, (February 24, 2003). On April 25, 2003, R336.1120 became federally effective.

15. R336.1120 defines "true vapor pressure" as the equilibrium partial pressure exerted by a liquid or the sum of partial pressures exerted by a mixture of liquids.

16. On July 26, 1982, U.S. EPA approved R336.1106 as part of the federally enforceable Michigan SIP. 47 Fed. Reg. 32116, (July 26, 1982). On February 28, 1989 and June 11, 1992, R336.1106 was revised. 54 Fed. Reg. 8354, (February 28, 1989) and 57 Fed. Reg. 24752, (June 11, 1992). On July 13, 1992, R336.1106 became federally effective.

17. R336.1106 defines "fixed roof stationary vessel" as a stationary vessel with a roof connected in a rigid fashion to the side walls of the vessel, a spherically-shaped vessel, or a pressure vessel designed to maintain a specific working pressure.

18. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000

for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

19. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

#### **General Allegations**

21. Respondent owns and operates a bulk petroleum distribution terminal (facility) at 630 Ottawa Avenue, Holland, Michigan.

22. The Holland Terminal facility consists of a dual lane loading rack, six large petroleum storage tanks, of which one is a variable vapor-space tank, a vapor recovery unit (VRU), and several small storage tanks.

23. Tanks #2 and #4 store No. 2 fuel oil, Tanks #1, #5, and #6 store regular unleaded gasoline, and Tank #3 stores premium unleaded gasoline.

24. Vapors from regular unleaded gasoline and premium unleaded gasoline are air contaminants as defined in R336.1101.

25. The variable vapor-space tank and the VRU are air pollution control equipment as defined in R336.1101.

26. Vapors from Tanks #1, #5, and #6, along with vapors from tanker trucks at the loading rack, vent through a closed-loop system to Tank #3, the variable vapor-space tank.

27. The variable vapor-space tank is connected to the VRU, a dual bed carbon adsorber, which is activated automatically when the roof of the variable vapor-space tank reaches two-thirds of its total travel height and is activated manually whenever Holland Terminal receives petroleum product.

28. The roof of the variable vapor-space tank when operating satisfactorily is to rise when vapors are released from the organic compounds stored in the gasoline storage tanks.

29. From November 2002 until April 2006 the roof of the variable vapor-space tank consistently stayed at a relatively low height during periods of product receipt and rarely rose above 0 ft during periods when product was not being received.

30. Unleaded gasoline and premium unleaded gasoline are organic compounds as defined in R335.1115.

31. During an inspection of the facility on November 4, 2002, the Air Quality Division (AQD) of the Michigan Department of Environmental Quality discovered a gasket on the vapor recovery line nearest to the variable vapor-space tank leaking free product.

32. During an inspection of the facility on June 28, 2004, AQD noticed that the pressure/vacuum (p/v) vents on Tanks #5 and #6 were closed while a 24" gasketed well cover on each of these tanks leaked organic vapors.

33. Holland Terminal sets the 24" gasketed well covers mentioned in paragraph 32, along with other emergency vents, to vent at a higher rate of pressure than the p/v vents.

34. AQD cited R336.1910 in Letters of Violation (LOVs) dated November 12, 2002 and July 8, 2004 for the violations described in paragraphs 31 and 32, respectively.

35. Tanks #1, #5, and #6 have a capacity greater than 40,000 gallons.

37. Tanks #1, #5, and #6 store organic compounds with a true vapor pressure of more than 1.5, but less than 11 psia, at actual storage conditions.

38. Tanks #1, #5, and #6 are fixed roof stationary vessels as defined in R336.1106.

39. AQD discovered a 24" dome cover on Tanks #5 and #6 leaking organic vapors during the November 4, 2002 inspection.

40. AQD discovered a Shand & Jurs emergency relief/pressure relief vent on Tank #1 and a manual tape gauge on Tank #6 leaking organic vapors during an inspection of the facility on September 3, 2003.

41. AQD cited R336.1604 in LOVs dated July 8, 2004, November 12, 2002, and September 5, 2003 for the leaks described in paragraphs 32, 39, and 40, respectively.

42. U.S. EPA discovered organic vapor leaks from an 8" sample well cover & cap on Tank #1 and a 24" bolted gasketed manhole cover on Tank #6 during an inspection of the facility on June 9, 2005.

43. According to its August 5, 2005 response to an Information Request issued by U.S. EPA on July 15, 2005, Holland Terminal discovered a 10" Shand & Jurs emergency vent on Tank #1 leaking organic vapor on April 14, 2005 and put stainless steel flange bands on two flanges on the vapor lines near Tank #3 on January 30, 2005 to stop small leaks.

44. The leaks described in paragraphs 32, 39, 40, 42, and 43 occurred during normal facility conditions.

45. On November 2, 2005, U.S. EPA issued an Amended Notice of Violation (NOV) to Holland Terminal for violations of the Michigan SIP regulations R336.1910 and R336.1604(2) discovered on November 4, 2002, September 3, 2003, June 28, 2004, April 14, 2005, and June 9, 2005.

46. On November 8, 2005, U.S. EPA and Holland Terminal held a conference to discuss the November 2, 2005 Amended NOV.

**Count I**

47. Complainant incorporates paragraphs 1 through 46 of this complaint, as if set forth in this paragraph.

48. Holland Terminal failed to maintain and operate its air pollution control system in a satisfactory manner as shown through non-emergency leaking from tank openings and consistently low variable vapor-space tank roof height. This is in violation of R336.1910.

**Count II**

49. Complainant incorporates paragraphs 1 through 46 of this Complaint, as if set forth in this paragraph.

50. Holland Terminal failed to maintain its gasoline storage tanks such that all openings on the tanks, except stub drains, are equipped with covers, lids, or seals such that the cover, lid, or seal is in the closed position at all times, except when in actual use. This is in violation of R336.1604(2)(a).

**Proposed Civil Penalty**

51. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

52. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$133,775. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

53. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

#### **Rules Governing This Proceeding**

54. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

#### **Filing and Service of Documents**

55. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as

part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

56. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Michael R. Berman, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Berman at (312) 886-6837.

Mr. Berman's address is:

Michael R. Berman (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**Penalty Payment**

57. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency - Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent

simultaneously must send copies of the check and transmittal letter to Michael R. Berman and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**Opportunity to Request a Hearing**

58. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 59 through 64 below.

**Answer**

59. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 55, above, and must serve copies of the written answer on the other parties.

60. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

61. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

62. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

63. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 58 above.

64. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding

Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

#### Settlement Conference

65. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Michael R. Berman at the address or phone number specified in paragraph 56, above.

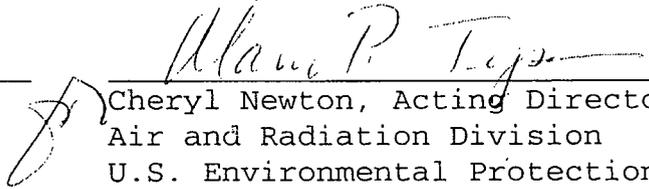
66. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

67. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

Date

9/29/06

  
Cheryl Newton, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

CAA-05-2006-0038

In the Matter of Holland Terminal, Inc.  
 Docket No. **CAA-05-2006-0038**

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number \_\_\_\_\_ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Julius Essenburg, President  
 Holland Terminal, Inc.  
 630 Ottawa Avenue  
 Holland, Michigan 49423

Clifford Knaggs  
 Knaggs, Harter, Brake, & Schneider, PC  
 7521 Westshire Drive  
 Suite 100  
 Lansing, Michigan 48917-8660

on the 29<sup>th</sup> day of September, 2006.

Shanee Rucker  
 Shanee Rucker  
 AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0198 9529

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