

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

CAA-5-2009-090

IN THE MATTER OF:

Ashta Chemicals, Inc.,  
Ashtabula County  
Ashtabula, Ohio,

Respondent.

) Docket No.  
)  
) Proceeding to Assess a Civil  
) Penalty under Section 113(d)  
) of the Clean Air Act, 42 U.S.C.  
) § 7413(d), and Section 14(a)  
) of FIFRA, 7 U.S.C. §1361(a)  
)

MM-5-2001-004

FIFRA-5-2001-099

**ADMINISTRATIVE COMPLAINT**

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and to assess a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 1361.

2. The Complainant is, by lawful delegation, the Regional Administrator, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Ashta Chemicals, Inc., (Ashta), which is and was at all times relevant to this Complaint, a corporation operating under the laws of the State of Ohio.

**GENERAL ALLEGATIONS**

4. At all times relevant to this Complaint, Ashta has been operating a place of business at 3509 Middle Road, Ashtabula County, Ashtabula, Ohio 44005-0858 (the "facility").

5. At all times relevant to this Complaint, Ashta is a "person" as that term is defined in Section 301(e) of the CAA, 42

U.S.C. § 7602(e), and Section 2(s) of FIFRA, 7 U.S.C. § 7602(s).

**Factual Background**

6. On June 14-25, 1999, U.S. EPA and the Ohio Environmental Protection Agency (OEPA) conducted a multi-media inspection at the Ashta facility.

7. Ashta is the owner and/or operator of processes and equipment at the facility, including the following:

- a. Two natural gas fired boilers (North and South boilers);
- b. Anhydrous potassium carbonate (APC) process; and
- c. Potassium hydroxide concentrator (KOH) process.

8. Prior to the June 14-25, 1999 inspection, OEPA requested from the Respondent certain Ashta facility records, including APC process baghouse operating records.

9. During the inspection, U.S. EPA inspectors requested various records regarding, and observed various processes at, the Ashta facility.

10. During the inspection, Ashta representatives stated that they did not have the facility's APC process baghouse operating records since approximately March 1996.

11. During the inspection, U.S. EPA inspectors requested Ashta's records of the facility's hydrogen stack discharge temperatures.

12. During the inspection, U.S. EPA inspectors requested Ashta's records of the facility's emission control system.

13. In response to an OEPA information request issued after

the inspection, Ashta estimated particulate emissions from the load-out chute.

14. The processes and equipment identified in paragraph 7, above, are each a new source as that term is defined at OAC Rule 3745-31-01.

15. New sources are subject to the permit-to-install (PTI) requirements of OAC 3745-31-02.

16. Best Available Technology (BAT) for the processes identified in paragraph 7, above, is incorporated into the respective PTIs as a condition of the PTI.

17. On or about January 28, 1991, Ashta began constructing the North Boiler.

18. The North Boiler is a new source, as defined at OAC Rule 3745-31-01.

19. Ashta received a PTI for the North Boiler on or about October 30, 1991.

20. On or about May 15, 1995, Ashta began constructing the South Boiler.

21. The South Boiler is a new source, as defined at OAC Rule 3745-31-01.

22. Ashta received a PTI for the South Boiler on or about February 14, 1996.

23. On or about December 1, 1994, Ashta began constructing the APC Process.

24. The APC Process is a new source, as defined at OAC Rule 3745-31-01.

25. Ashta received a PTI for the APC Process on or about

February 14, 1996.

26. On or about May 15, 1995, Ashta began constructing the KOH concentrator.

27. The KOH concentrator is a new source, as defined at OAC Rule 3745-31-01.

28. Ashta received a PTI for the KOH concentrator on or about February 14, 1996.

29. Ashta owns and operates a mercury chlor-alkali manufacturing process at the facility.

30. On June 23, 1999, an inspector employed by the Ohio Department of Agriculture (ODA) and duly authorized to conduct inspections under FIFRA (inspector), conducted an inspection at the Respondent's facility to examine and collect samples of any pesticides packaged, labeled, and released for shipment, as authorized under Section 9 of FIFRA, 7 U.S.C. § 136g.

31. During the June 23, 1999 inspection, the ODA inspector collected a sample, ODA Sample No. 990623-2161-11-6, of a label of the product, Chloropicrin, EPA Reg. No. 62531-1, that Respondent was holding for distribution or sale.

32. During the June 23, 1999 inspection, the ODA inspector collected a sample, ODA Sample No. 990623-2161-11-11, of the Ashta facility's production records for Chloropicrin, EPA Reg. No. 62531-1.

33. During the June 23, 1999 inspection, the ODA inspector collected a sample, ODA Sample No. 990623-2161-11-3, of a label of the product, Chlorine, that Respondent was holding for distribution or sale.

34. During the June 23, 1999 inspection, the inspector provided a Receipt for Samples for the samples collected by the ODA, and an agent, owner, or operator of the Ashta facility signed the Receipt for Samples acknowledging that the samples were for pesticides packaged, labeled and released for shipment.

35. On February 11, 2000, U.S. EPA issued a notice of violation (NOV) to Ashta for violations of the Ohio SIP [OAC Rules 3745-17-08, 3745-17-11, 3745-31-02] and conditions in permits-to-install.

36. On February 11, 2000, U.S. EPA issued a finding of violation (FOV) to Ashta for violations of the General Provisions [40 C.F.R. § 61.12] and the National Emission Standards for Mercury [40 C.F.R. § 61.55] of the National Emission Standards for Hazardous Air Pollutants.

37. On March 14, 2000, U.S. EPA and representatives of Ashta Chemicals, Inc., held a conference to discuss the February 11, 2000 NOV and FOV.

### **Statutory and Regulatory Background**

#### Clean Air Act

38. On October 23, 1980 (revised on September 8, 1993), U.S. EPA approved the Ohio Administrative Code (OAC) 3745-31 as part of the federally enforceable Ohio state implementation plan (SIP). This approval included 3745-31-02 and 3745-31-05. 45 Fed. Reg. 72119, (October 31, 1980) (revised in 58 Fed. Reg. 47211, (September 8, 1993)).

39. OAC 3745-31-02 states that no person shall cause,

permit or allow the installation of a new source of air pollutants without first obtaining a permit to install from the director.

40. OAC 3745-31-05(A) states that the director "shall issue a permit to install ... if [the director] determines that the installation or modification and operation of the air contaminant source ... will: (1) not prevent or interfere with the attainment or maintenance of applicable ... ambient air quality standards; (2) not result in the violation of any applicable laws ...; and (3) employ best available technology ...."

41. OAC 3745-31-05(C) states that the director may impose such special terms and conditions as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of environmental quality.

42. On May 27, 1994, U.S. EPA approved OAC 3745-17 as part of the federally enforceable Ohio SIP, effective June 27, 1994. This approval includes OAC 3745-17-08 and 3745-17-11. 59 Fed. Reg. 27464, (May 27, 1994).

43. OAC 3745-17-08(B) states that "no person shall cause or permit any fugitive dust source to be operated; or any materials to be handled, transported, or stored ... without taking or installing reasonably available control measures to prevent fugitive dust from becoming airborne."

44. OAC 3745-17-08(B)(3) establishes the installation and use of hoods, fans, etc. as examples of reasonably available control measures.

45. OAC 3745-17-11 establishes industrial mass limits for

any operation, process or activity which may release particulate emissions into the ambient air.

46. OAC 3745-17-11(B) states "... any owner or operator of a source of particulate emissions which is located in the following counties shall operate said source so that the particulate emissions do not exceed the allowable emission rate specified by "curve P-1" of "Figure II" or by "Table I", whichever is applicable under paragraph (A)(2) of this rule: Adams, Allen, Ashtabula ...."

47. 40 C.F.R. § 52.23 states, in part, that failure to comply with any permit condition issued pursuant to approved or promulgated regulations for the review of new or modified stationary sources, renders a person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to an enforcement action under section 113 of the CAA.

48. 40 C.F.R. § 52.01 defines stationary source as any building, structure, facility or installation which emits or may emit an air pollutant for which a national standard is in effect.

49. Under Sections 112, 113, 114 and other sections of the CAA, the Administrator of U.S. EPA promulgated the General Provisions which include 40 C.F.R. § 61.12.

50. The General Provisions apply to any stationary source for which a standard is prescribed under 40 C.F.R. Part 61.

51. 40 C.F.R. § 61.12 requires, among other things, that a stationary source and associated air pollution equipment be maintained and operated in accordance with good engineering

practice for minimizing emissions.

52. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Mercury at 40 C.F.R. §§ 61.50 et seq.

53. The NESHAP for Mercury applies to stationary sources which use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide. 40 C.F.R. § 61.50.

54. 40 C.F.R. § 61.55(b)(4)(i) states that immediately following completion of emission testing, parameters monitored during the testing must be monitored and recorded manually or automatically at least once per hour.

55. 40 C.F.R. § 61.55(b)(7) states that parameter excursions are unacceptable operation and maintenance of the emission control system.

56. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for, among other things, state implementation plan violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for, among other things, state implementation plan violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

57. The Administrator may assess a penalty greater than \$220,000, under Section 113(d)(1), where the Administrator and the Attorney General of the United States jointly determine that

a matter involving a larger penalty is appropriate for an administrative penalty action.

58. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$220,000, is appropriate for an administrative penalty action.

59. 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.

60. 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.

#### FIFRA

61. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

62. The Ashta facility is a "producer" as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R.

§ 167.3.

63. The Ashta facility is a "registrant" as that term is defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

64. Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$5,000 for each offense of FIFRA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$5,500 for each violation of FIFRA that occurs on or after January 31, 1997.

### **SPECIFIC ALLEGATIONS**

#### **Count I**

#### **Failure to operate the baghouse and failure to employ reasonably available control measures (RACM) to control excess particulate matter**

65. Complainant incorporates paragraphs 1 through 64 of this Complaint, as if set forth in this paragraph.

66. OAC 3745-17-08 prohibits the operation of a dust source without operating and installing reasonably available control measures (RACM) to prevent dust from becoming airborne.

67. Ashta installed a baghouse on the APC process in 1996.

68. In approximately 1996, Ashta installed a secondary chute to the baghouse from the load-out chute at the APC plant, to prevent load-out chute dust from becoming airborne.

69. Ashta did not operate the facility's APC process baghouse from approximately March 1996 through, at least,

September 1999.

70. One of the conditions of Ashta's PTI for the APC process is continuously operating the APC baghouse.

71. Failure to operate the APC process baghouse is a violation of the PTI.

72. Ashta's violation of the PTI requirements is a violation of the Ohio SIP, OAC 3745-31-02, in accordance with 40 C.F.R. § 52.23, from June, 1996 to at least September 1999.

73. After the APC process baghouse was shutdown in March 1996, Ashta removed the secondary chute from the load-out chute at their APC plant.

74. Removal of the secondary chute resulted in the discontinued use of RACM, and violates OAC 3745-17-08 from June 1996 through, at least, September 1999.

### Count II

#### Excess Particulate Emissions at the Anhydrous Potassium Carbonate Process - - Failure to Operate the APC Process Baghouse

75. Complainant incorporates paragraphs 65 through 74 of this Complaint, as if set forth in this paragraph.

76. Ashta's failure to operate the APC process baghouse between approximately March 1996 and September 1999, led to emissions from the load-out chute at the facility's APC plant.

77. Ashta's February 14, 1996, APC process PTI establishes a 2.65 lbs-PM/hr maximum mass emission rate for particulate matter for the APC plant.

78. Emissions from the facility's APC plant exceeded the

2.65 lb-PM/hr PTI limit on at least 498 separate days from June 24, 1996 through September 1999.

79. Ashta's release of particulate matter from the APC plant at levels above the allowable mass limits established in the PTI violates 40 C.F.R. § 52.23.

**Count III**

**Excess Particulate Emissions at the Anhydrous Potassium Carbonate Process - - Failure to Meet Industrial Mass Limits**

80. Complainant incorporates paragraphs 75 through 79 of this Complaint, as if set forth in this paragraph.

81. OAC 3745-17-11 establishes industrial mass emission rates for any operation, process or activity which releases or may release particulate into the ambient air.

82. The applicable industrial mass emission rate, under OAC 3745-17-11, for Ashta's APC process is 10.1 lb-PM/hr.

83. Emissions from Ashta's APC plant process exceeded the 10.1 lb-PM/hr industrial mass emission rate on 280 separate days from June 15, 1996 through September 1999.

84. Failure to comply with the industrial mass emission rate, under OAC 3745-17-11, is a violation of the Ohio SIP.

**Count IV**

**Failure to Maintain Records**

85. Complainant incorporates paragraphs 80 through 84 of this Complaint, as if set forth in this paragraph.

86. During the June 1999 inspection, U.S. EPA requested,

and Ashta failed to produce, 51 days of records for the hydrogen stack discharge temperatures. In response to U.S. EPA's 114 Request for Information, Ashta provided one of the missing log sheets for hydrogen stack discharge temperatures requested during the inspection.

87. Ashta failed to monitor and/or record the hydrogen stack discharge temperatures for 50 days.

88. Ashta's failure to maintain hydrogen stack discharge temperature records is a violation of 40 C.F.R. § 61.55(b)(4).

#### Count V

#### Unacceptable Operation and Maintenance of Emission Control System

89. Complainant incorporates paragraphs 85 through 88 of this Complaint, as if set forth in this paragraph.

90. 40 C.F.R. § 61.12(c) requires the owner or operator of each stationary source to maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution control practice for minimizing emissions.

91. The Respondent is required by its permit to operate its hydrogen boilers at a stack discharge temperature not exceeding 20°C.

92. Respondent conducted a stack test as required by the Mercury NESHAP in accordance with 40 C.F.R. § 60.13, which identified a 20°C stack discharge temperature limitation for its hydrogen boilers.

93. During the June 1999 inspection, U.S. EPA found that

Ashta exceeded the allowable 20°C stack discharge temperature for 200 hours from January 1997 through June 1999.

94. Ashta's excursions are unacceptable operation and maintenance of the emission control system [40 C.F.R. § 61.55(b)(7)], and a violation of 40 C.F.R. § 61.12 for not operating and maintaining associated equipment for air pollution control in a manner consistent with good air pollution control practices for minimizing emissions.

### FIFRA

#### Count VI

##### Production of a pesticide in an unregistered establishment

95. Complainant incorporates by reference the allegations in paragraphs 89 through 94 of this Complaint.

96. Section 7 (a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20 (a), state that no person shall produce any pesticide subject to FIFRA, or active ingredient used in producing a pesticide subject to FIFRA, in any state, unless the establishment in which it is produced is registered with the Administrator.

97. "Produce" is defined as "to manufacture, prepare, compound, propagate or process any pesticide or device or active ingredient used in producing a pesticide," Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

98. "Establishment" is defined as "any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale,"

Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

99. Respondent produces Chloropicrin at its Ashtabula, Ohio establishment.

100. Chloropicrin has been registered with U.S. EPA as a pesticide.

101. At the time of the inspection, Respondent had not registered its establishment to produce pesticides with the Administrator of U.S. EPA.

102. Respondent's production of a pesticide in an unregistered establishment constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

#### **COUNT VII**

##### **Incomplete maintenance of records**

103. Complainant incorporates by reference the allegations in paragraphs 95 through 102 of this Complaint.

104. Pursuant to Section 8 of FIFRA, 7 U.S.C. § 136f(a), 40 C.F.R. § 169.2(a) states that all producers of pesticides or active ingredients used in producing pesticides subject to FIFRA shall maintain records showing the U.S. EPA registration number of all pesticides produced.

105. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i) provides that it is unlawful for any person to refuse to prepare, maintain, or submit any records required by or under Sections 5, 7, 8, 11, or 19 of FIFRA.

106. During the June 23, 1999 inspection, the inspector collected a documentary sample (ODA Sample No. 990623-2161-11-11)

of the production records for Chloropicrin.

107. Respondent's production records for Chloropicrin did not include the U.S. EPA registration number for Chloropicrin.

108. Respondent's omission of the U.S. EPA registration number from the production records for Chloropicrin constitutes incomplete preparation and maintenance of records and is a violation of 40 C.F.R. § 169.2(a) and Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

#### COUNT VIII

##### False, Misleading and Misbranded Pesticide Product

109. Complainant incorporates by reference the allegations in paragraphs 103 through 108 of this Complaint.

110. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(A), defines the term "misbranded", stating that a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

111. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.

112. The Chloropicrin label collected during the June 23, 1999 inspection of the facility, displays the following number as its EPA Establishment Number: 62531.

113. At the time of the facility inspection, the Respondent did not have an EPA Establishment Number for this facility.

114. Subsequent to the inspection, the Respondent applied for and obtained an EPA Establishment Number for the facility (062531-OH-001).

115. By placing a false and misleading EPA Establishment Number on the Chloropicrin label it produces, the Respondent is misbranding the Chloropicrin product and is in violation of 40 C.F.R. § 156.10(a)(5) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

#### **COUNT IX**

##### **False, Misleading and Misbranded Pesticide Product**

116. Complainant incorporates by reference the allegations in paragraphs 109 through 115 of this Complaint.

117. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines the term "misbranded", stating that a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

118. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.

119. The Chlorine label collected during the June 23, 1999 inspection of the facility, displays the following number, FIFRA NO. 21139-1-6253.

120. The number "FIFRA NO. 21139-1-6253" is a false and misleading number because it is not an existing identification

number or EPA Registration number.

121. The Chlorine label collected during the June 23, 1999 inspection of the facility does not display the EPA Registration number for Chlorine.

122. The Chlorine label is a false and misleading label because it did not display the EPA Registration number for Chlorine.

123. By placing a label with a false and misleading number and by lack of the EPA Registration number on the Chlorine label it produces, the Respondent is misbranding the Chlorine product, and is in violation of 40 C.F.R. § 156.10(a)(5) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

**COUNT X**

**Failure to submit a report by March 1, 1997 for the production of Chloropicrin during 1996**

124. Complainant incorporates by reference the allegations contained in paragraphs 116 through 123.

125. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations codified at 40 C.F.R Part 167, Subpart E, require any producer operating a registered establishment to report to U.S. EPA the types and amounts of each pesticidal product that he is currently producing, which he produced during the past year, and which he sold or distributed during the past year (the "Annual Pesticide Report"). 40 C.F.R. § 167.85(b).

126. A producer is responsible for obtaining, completing, and submitting the Annual Pesticide Production Report (report)

each year. 40 C.F.R. § 167.85(c).

127. The report must be submitted to U.S. EPA on or before March 1 of the year following the calendar year which is the subject of the report, even if the producer produced no pesticidal product for the reporting year. 40 C.F.R. § 167.85(d).

128. Respondent has produced Chloropicrin at its facility since 1977.

129. Respondent did not submit an Annual Pesticide Report by March 1, 1997, for the 1996 production of Chloropicrin.

130. Respondent's failure to submit the report constitutes a violation of Section 7 (c) (1) of FIFRA, 7 U.S.C. § 136e (c) (1), and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

#### COUNT XI

#### Failure to submit a report by March 1, 1998 for the production of Chloropicrin during 1997

131. Complainant incorporates by reference the allegations contained in paragraphs 124 through 130.

132. Respondent did not submit an Annual Pesticide Report by March 1, 1998, for the 1997 production of Chloropicrin.

133. Respondent's failure to submit the report constitutes a violation of Section 7 (c) (1) of FIFRA, 7 U.S.C. § 136e (c) (1), and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §

136j(a)(2)(L).

**COUNT XII**

**Failure to submit a report by March 1, 1999 for the production of Chloropicrin during 1998**

134. Complainant incorporates by reference the allegations contained in paragraphs 131 through 133.

135. Respondent did not submit an Annual Pesticide Report by March 1, 1999, for the 1998 production of Chloropicrin.

136. Respondent's failure to submit the report constitutes a violation of Section 7 (c) (1) of FIFRA, 7 U.S.C. § 136e (c) (1), and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

**PROPOSED CIVIL PENALTY**

**Clean Air Act**

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

138. 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 \$247,500. 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.

139. 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.

**Federal Insecticide Fungicide and Rodenticide Act**

140. Section 14(a)(4) of FIFRA, 7 U.S.C. §1361(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

141. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$33,000. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated July 2, 1990, a copy of which is enclosed with this complaint.

**Rules Governing This Proceeding**

142. 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" (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**

143. 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-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

144. 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 Stuart Hersh to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Hersh at (312) (312)886-6235. Mr. Hersh's address is:

Stuart P. Hersh (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Penalty Payment**

145. 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 70753  
Chicago, Illinois 60673

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 Stuart Hersh 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 60604-3590

PTES Secretary (DT-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Opportunity to Request a Hearing**

146. 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 147 through 154 below.

**Answer**

147. 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 143, above, and must serve copies of the written answer on the other parties.

148. 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.

149. 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.

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

151. 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 146 above.

152. 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**

153. 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 Stuart Hersh at the address or phone number specified in paragraph 144, above.

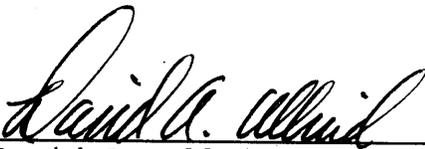
154. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing 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**

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

June 8, 2001  
Date

  
\_\_\_\_\_  
David A. Ullrich  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

In the Matter of Ashta Chemicals, Inc.  
Docket No.

CAA-5-2001-010

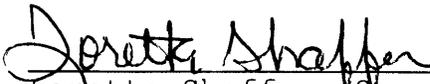
MN-5-2001-004

CERTIFICATE OF SERVICE

MFRA-5-2001-019

I, Loretta Shaffer, 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, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 64 Fed. Reg. 40138 (1999) (to be codified 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:

on the 13<sup>th</sup> day of June, 2001.

  
\_\_\_\_\_  
Loretta Shaffer, Secretary  
AECAS (OH/MN)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9601 4288