

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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)  
IN THE MATTER OF: )  
) ADMINISTRATIVE ORDER  
Tonawanda Coke Corporation )  
) Index No. CAA-02-2010-1005  
Respondent. )  
)  
Proceeding under Section 113 of the )  
Clean Air Act, 42 U.S.C. §7413. )  
)  
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ADMINISTRATIVE ORDER

1. This Administrative Order (“Order”) is issued to Tonawanda Coke Corporation (“Respondent”) pursuant to Section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. §7413(a)(3)(B) (the “Act”). Section 113(a)(3) grants to the Administrator of the U.S. Environmental Protection Agency (“EPA”) the authority to issue an order requiring a person to comply with Section 112 of the Act. This authority was delegated by the Administrator to the Regional Administrators, and within EPA Region 2, it was redelegated to, among others, the Director of the Emergency and Remedial Response Division.

STATUTORY AND REGULATORY BACKGROUND

2. Pursuant to Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

3. Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C), and the regulations at 40 C.F.R. § 68.3 define “stationary source” as, *inter alia*, any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

4. Section 112(r)(2)(A) of the Act, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance, as defined below, or other extremely hazardous substance into the ambient air from a stationary source.

5. Section 112(r)(2)(B) of the Act, 42 U.S.C. § 7412(r)(2)(B), defines “regulated substance” as a substance listed pursuant to Section 112(r)(3) of the Act. The list of substances regulated under Section 112(r) of the Act is set forth at 40 C.F.R. § 68.130.
6. As used herein, the term “extremely hazardous substance” shall mean an extremely hazardous substance within the meaning of Section 112(r)(1) of the Act. Such substances include any chemical which may, as a result of short-term exposures because of releases to the air, cause death, injury, or property damage because of its toxicity, reactivity, flammability, or corrosivity.
7. Pursuant to Sections 112 and 114 of the Act, EPA promulgated the “National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants,” 40 C.F.R. Part 61, Subpart L, §§ 61.130 through 61.139 (NESHAP Subpart L).
8. Pursuant to Sections 112 and 114 of the Act, EPA promulgated the “National Emission Standard for Equipment Leaks (Fugitive Emission Sources),” 40 C.F.R. Part 61, Subpart V, §§ 61.240 through 61.247 (NESHAP Subpart V).
9. In accordance with the Act, EPA promulgated technology-based maximum achievable control technology (“MACT”) standards, which are codified in 40 C.F.R. Part 63.
10. Pursuant to Sections 112 and 114 of the Act, EPA promulgated the “National Emission Standards for Coke Oven Batteries,” 40 C.F.R. Part 63, Subpart L, §§ 63.300 through 63.313 (MACT Subpart L).
11. Pursuant to 40 C.F.R. § 63.300(a), the provisions of MACT Subpart L apply to, among other sources, existing by-product coke oven batteries at a coke plant, on and after the specified dates, unless otherwise specified in MACT Subpart L.
12. 40 C.F.R. § 61.130(a) provides that NESHAP Subpart L applies to specific sources at furnace and foundry coke by-product recovery plants, including but not limited to tar-intercepting sumps, and to the following equipment that are intended to operate in benzene service: pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by § 61.135.
13. 40 C.F.R. § 61.131 defines “exhauster” as “a fan located between the inlet gas flange and outlet gas flange of the coke oven gas line that provides motive power for coke oven gases.”
14. All terms not defined herein shall have their ordinary meanings, unless such terms are defined in the Act or any of its implementing regulations, in which case the statutory and regulatory definitions apply.

FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

15. Respondent owns and/or operates a coke plant, located at 3875 River Road, Tonawanda, New York (the "Facility"). The Facility is operated for the separation and recovery of coal tar derivatives (by-products) evolved from coal during the coking process of a coke oven battery, among other things. The Facility consists, in part, of a group of ovens connected by common walls, where coal undergoes destructive distillation under positive pressure to produce coke and coke oven gas, from which by-products are recovered.

16. Coke oven gas contains substances including, but not limited to, hydrogen sulfide, ammonia, sulfur dioxide, ethylene, ethane, acetylene, methane, propane, propylene, propadiene, butane, and butene.

17. The Facility occupies approximately 188 acres of land, and the nearest neighboring town is about 2 miles away. There are residences located approximately .43 miles from the Facility.

18. On April 30, 2002, the New York State Department of Environmental Conservation ("NYSDEC") issued Respondent a title V Operating Permit for the Facility, which had an expiration date of May 1, 2007. More than 180 days before the expiration of the Facility's title V Operating Permit, Respondent submitted to NYSDEC a title V Operating Permit renewal application, pursuant to 6 N.Y.C.R.R. § 621.13(a) and Condition 3 of the title V Operating Permit.

19. From April 14 through 21, 2009, EPA and NYSDEC inspectors conducted a compliance evaluation ("April Inspection") at the Facility to determine Respondent's compliance with certain requirements of the Act.

20. On May 20 - 21, 2009, EPA conducted a water compliance inspection at the Facility, to determine Respondent's compliance with, among other things, Clean Water Act requirements.

21. On or about June 17, 2009, EPA conducted an inspection of the Facility regarding the release notification provisions of Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9603(a), and Section 304 of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11004.

22. On or about June 17, 2009 and September 10, 2009, EPA conducted compliance inspections at the Facility regarding compliance with requirements pursuant to the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (collectively, "RCRA").

23. Representatives of NYSDEC conducted an inspection of the Facility on or about March 31, 2010.

24. On December 18, 2009, EPA issued a request for information letter to Respondent pursuant to Section 104(e) of CERCLA. Respondent submitted a response dated January 15, 2010.

25. On September 1, 2009, EPA issued a request for information letter to Respondent pursuant to Section 114 of the Act. Respondent submitted a response dated September 7, 2009.

26. According to information obtained by EPA, including information obtained during the June 17, 2009 EPA inspection of the Facility, information provided in Respondent's January 15, 2010 response to the December 18, 2009 EPA request for information letter, and information provided in Respondent's September 7, 2009 response to the September 1, 2009 EPA request for information letter, there was an incident at Respondent's Facility on or about March 17, 2009 at approximately 9:40 a.m. There was a bearing failure on the Facility's main electric power source. The Facility's back-up generator was put into service to power the plant, but then it also failed because of a cooling system leak. The exhauster for the coke oven, which requires electricity to pull coke oven gas from the coke oven to the by-products area, ceased operating, and beginning at approximately 9:50 a.m., the raw coke oven gas was sent to a flare, which is designed to combust the coke oven gas in such circumstances. The combustion of coke oven gas through the flare continued for approximately one hour and fifteen minutes.

27. According to information obtained by EPA, including information provided in Respondent's January 15, 2010 response to the December 18, 2009 EPA request for information letter, there was no calculation performed immediately following the release on March 17, 2009 to quantify the amount of material released. As part of Respondent's January 15, 2010 information request response, a list of released materials and amounts of released materials was provided to EPA. According to Respondent's January 15, 2010 information request response, the compounds released to the air during the March 17, 2009 incident include hydrogen sulfide, ammonia, hydrogen cyanide, benzene, toluene, xylene, and naphthalene.

28. According to Respondent's September 7, 2009 response to EPA's September 1, 2009 request for information letter, in addition to the March 17, 2009 incident, there were also incidents when coke oven gas was flared on June 23, 2009 and August 21, 2009.

29. According to information obtained by EPA, including information provided by Respondent and information provided by NYSDEC, on or about March 31, 2010 at approximately 2:10 a.m., there was an incident at the Facility whereby one of the exhausters had a malfunction. The Facility switched over to its back-up exhauster, which also failed. The raw coke oven gas was sent to the flare. According to NYSDEC inspectors, the malfunction lasted for approximately 11 to 12 hours. According to NYSDEC's March 31, 2010 inspection report of the March 31, 2010 incident, after the exhauster ceased operating, the coke oven battery was subjected to an excessive amount of back pressure, which had the potential to cause oven damage in the form of wall cracks.

30. During the April Inspection of the Facility, information was obtained regarding the exhausters at the Facility. Only one exhauster is needed to move the coke oven gas through the system at any given time. The Facility currently has two exhausters, identified as No. 2 and No. 3. The April Inspection also revealed that exhauster No. 3 was typically in operation, however at

the time of the April Inspection, exhauster No. 2 was in operation and exhauster No. 3 was designated as the back-up system.

31. During the April Inspection, EPA performed field measurements of coke byproduct recovery equipment components, including the exhauster bearing/seal of exhauster No. 2, using a toxic vapor analyzer (“TVA”) instrument. During the April Inspection, a TVA measurement of approximately 60,000 parts per million of volatile organic compounds was recorded at an exhauster No. 2 bearing/seal. Also during the April Inspection, a flange leak on the discharge side of exhauster No. 2 was noted and was found to be leaking greater than 10,000 parts per million of volatile organic compounds.

32. During the April Inspection, EPA inspectors noted that the pilot light for a flare in the bypass bleeder stack had been damaged as result of a power surge in the fall of 2008. The pilot light should be available at all times to provide automatic ignition of any raw coke oven gas that may be released to the flare. If, during such an incident, the pilot light is not operational, the raw coke oven gas cannot be combusted in the flare, and there would be a release of raw coke oven gas.

33. Other problems with the pilot light for the flare were identified in Respondent’s September 7, 2009 response to EPA’s September 1, 2009 request for information letter. According to Respondent’s September 7, 2009 information request response, on August 21, 2008 the pilot light was found to be not operating. It was relit but the thermocouple was faulty, and a new thermocouple was installed on September 9, 2008. Thereafter, the natural gas regulator was identified as not responding to adjustment and the regulator was replaced on November 17, 2008. On January 19, 2009, some relays burned when the charge car hit an electrical conduit that supplied power the pilot light indicator system. New relays were installed by February 12, 2009.

34. During the April Inspection of the Facility, EPA inspectors noted a pressure relief valve on the coke oven gas line returning to the coke ovens. The coke oven gas pressure is measured in the line coming off the exhausters, and is typically between 100 and 150 centimeters (cm) oil. The pressure relief valve was set to release at 120 to 130 cm oil, which meant the pressure relief valve could have been releasing coke oven gas as frequently as at half hour intervals during the April Inspection. The coke oven gas releases typically do not last for more than 15 seconds; however, a large quantity of coke oven gas could have been emitted as a result of this practice. On information and belief, this valve may have been relocated since the April Inspection.

35. During EPA’s May 2009 water compliance inspection of the Facility, EPA representatives observed a leak from the pipe running from the treated process wastewater tank to the publicly owned treatment works sampling point. The pipe leak was at the point where the sulfuric acid feed line enters the weak ammonia liquor process wastewater pipe. Facility maintenance staff initiated repair of the leaking pipe following identification by EPA and facility representatives.

36. During EPA’s May 2009 water compliance inspection of the Facility, EPA representatives observed that a weak ammonia liquor storage tank, which was in use at the time

of the inspection, was highly corroded. There was staining of the walls of the tank below the corroded area where material appeared to have overflowed from holes in the corroded tank wall.

37. On December 17, 2009, EPA issued an administrative complaint to Respondent, Docket Number RCRA-02-2010-7104, pursuant to Section 3008 of RCRA. The complaint cited two violations related to the coal piles and the tanks at the Facility, and ordered Respondent to clean up the remains of two tar sludge tanks that had burned in a 2007 fire and resulted in the release of hazardous waste tar residues to the surrounding soils. The RCRA violations included the unpermitted disposal of hazardous waste at the Facility and the failure to minimize hazardous waste releases at the Facility.

38. On December 17, 2009, EPA issued an Administrative Compliance Order, Docket Number CWA-02-2010-3012, and Request for Information to Respondent, pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("December 2009 Order"). The December 2009 Order was issued regarding violations of the Facility's New York State Pollutant Discharge Elimination System Permit and its Town of Tonawanda Industrial Sewer Connection Permit. These violations included pipes that were leaking process wastewater, the highly corroded weak liquor ammonia storage tank, inadequate secondary containment, illegal discharges of process wastewater and tar decanter sludge runoff into storm sewers, and the improper location and operation of flow monitoring and effluent sampling devices. The December 2009 Order directed Respondent to take actions, including the immediate cessation of its illegal discharges of stormwater and process wastewater, the repair of leaking and corroded equipment, and the proper monitoring of flow rates and its effluent.

39. On January 7, 2010, EPA issued a Clean Air Act compliance order to Respondent, Index Number CAA-02-2010-1001, pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), for numerous violations that occurred at the Facility (the "January 2010 Order"). The January 2010 Order asserted that Respondent failed to comply with requirements in Sections 112 and 114 of the Act; 40 C.F.R. Part 61, Subparts L, V and FF; 40 C.F.R. Part 63, Subpart L; and the Facility's title V operating permit. The January 2010 Order required Respondent to take actions to come into compliance with these requirements. The findings in the January 2010 Order included, but were not limited to, the following:

- a. Respondent failed to enclose and seal all openings on five excess ammonia-liquor storage tanks at the Facility (three weak ammonia-liquor storage tanks, a surge tank, and an ammonia removal system sump), in violation of 40 C.F.R. § 61.132(d) of NESHAP Subpart L;
- b. Respondent failed to make a first attempt at repair on the exhauster bearing/seal of the exhauster identified as exhauster No. 2 within 5 calendar days of detecting a leak, in violation of 40 C.F.R. § 61.135(d)(2) of NESHAP Subpart L, and the Facility's title V Operating Permit;
- c. Respondent failed to mark each piece of equipment in benzene service that is subject to NESHAP Subpart L in such a manner that it can be distinguished readily from other pieces of equipment in benzene service, in violation of 40

C.F.R. § 61.135(c) of NESHAP Subpart L, and the Facility's title V Operating Permit;

- d. Respondent failed to record and keep, in a readily accessible location, detailed schematics, design specifications, and piping and instrumentation diagrams pertaining to the design of control equipment installed to comply with 40 C.F.R. § 61.132, in violation of 40 C.F.R. § 61.138(a)(1) of NESHAP Subpart L, and the Facility's title V Operating Permit;
- e. Respondent failed to keep records of monitoring and visual inspections of the control equipment or system(s) installed for the Facility's process vessels, tar storage tanks, and tar-intercepting sumps, in violation of 40 C.F.R. § 61.138(b) of NESHAP Subpart L, and the Facility's title V Operating Permit;
- f. Respondent failed to include, in the semiannual reports submitted by Respondent from September 13, 2005 through March 12, 2009, all of the information specified in 40 C.F.R. § 61.138(f)(1) through (6), including but not limited to: information regarding any system abnormalities found during the annual maintenance inspection, if one occurred during the semiannual reporting period; and information regarding the number of exhausters found leaking, and if the leaks were repaired, in violation of § 61.138(f) of NESHAP Subpart L, and the Facility's title V Operating Permit; and
- g. Respondent failed to provide refresher training for all coke plant operating personnel with responsibilities that impact emissions, in violation of 40 C.F.R. § 63.306 of MACT Subpart L, and the Facility's title V Operating Permit.

40. On February 4, 2010, EPA issued a Clean Air Act compliance order to Respondent, Index Number CAA-02-2010-1002, pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), for violations that occurred at the Facility ("February 2010 Order"). These violations were also the subject of a prior Notice of Violation dated December 7, 2009. The February 2010 Order asserts that Respondent failed to comply with requirements in 6 N.Y.C.R.R. Part 214, which are approved by EPA and incorporated in the New York State Implementation Plan, and which are included as federally enforceable conditions in the Facility's title V operating permit. Specifically, the violations in the February 2010 Order included that Respondent operated the wet quench towers of its coke oven battery without baffle systems designed to reduce particulate emissions during quenching as required pursuant to the requirements of Part 214, and that on five occasions between June 28, 2005 and June 18, 2009, Respondent failed to determine its compliance with the 1,600 mg/l total dissolved solids limit properly pursuant to the requirements of Part 214. The February 2010 Order requires Respondent to take actions to demonstrate and ensure compliance with these requirements.

41. On April 12, 2010, EPA issued a Notice of Violation to Respondent, Index Number CAA-02-2010-1301, pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1) ("April 2010 NOV"). The April NOV alleged that Respondent failed to comply with requirements set forth in 6 N.Y.C.R.R. Part 214 and 6 N.Y.C.R.R. Part 201, entitled "Permits and Certificates," which are approved by EPA and incorporated in the New York State Implementation Plan. The



April 2010 NOV found the following: on twenty-three instances between February 13, 2009 and March 13, 2009, Respondent exceeded the average opacity of emissions limit of 20 percent at its waste heat stack, in violation of the requirements of Part 214; Respondent operated a pressure relief valve at the Facility without a valid certificate to operate issued by the NYSDEC, in violation of the requirements of Part 201; and on six instances between May 5, 2008 and August 27, 2009, the duration of visible emissions from Respondent's by-product coke oven battery exceeded 150 seconds from any five consecutive charges, in violation of the requirements of Part 214.

42. Respondent is, and at all times referred to herein was, a "person" as defined by Section 302(e) of the Act, 42 U.S.C. § 7602(e), and the owner and/or operator of the Facility.

43. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the Act.

44. At its Facility, Respondent stores, processes, handles, and/or produces substances listed pursuant to Section 112(r)(3) of the Act including hydrogen sulfide, ammonia, sulfur dioxide, ethylene, ethane, acetylene, methane, propane, propylene, and propadiene.

45. Pursuant to Section 112(r)(1) of the Act, Respondent has a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

46. Pursuant to EPA's "Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1)" dated May 2000, "EPA believes that owners and operators who have these substances must adhere, at a minimum, to recognized industry standards and practices (as well as any government regulations) in order to be in compliance with the general duty clause."

47. As detailed above, during the two incidents which occurred on March 17, 2009 and March 31, 2010, failures of equipment at the Facility have resulted in raw coke oven gas being sent to a flare. During these March 17, 2009 and March 31, 2010 incidents, there were releases of substances which are regulated pursuant to Section 112(r). Respondent has also informed EPA that there were two additional incidents when coke oven gas was flared on June 23, 2009 and August 21, 2009.

48. As described above, the EPA and NYSDEC inspections, and recent EPA enforcement actions to Respondent, detailed numerous concerns regarding the equipment at the Facility which is used to handle regulated substances, including: problems with the exhausters and pilot light; equipment which is leaking and corroded; failure to promptly repair equipment; failure to properly mark equipment; failure to record and keep in a readily accessible location, detailed schematics, design specifications, and piping and instrumentation diagrams for equipment; failure to keep records of monitoring and visual inspections of equipment; and failure to include in semiannual reports all required information, including information regarding any system abnormalities found during the annual maintenance inspection, if one occurred during the reporting period, and information regarding the number of exhausters found leaking, and if the

leaks were repaired. Respondent also failed to provide required training for all coke plant operating personnel with responsibilities that impact emissions. The failures to properly maintain, inspect, and/or keep in good repair equipment at the Facility which is used to handle regulated substances could lead to a substantial release of regulated substances from the Facility.

49. Based on information obtained by EPA, and as detailed above, Respondent has failed to properly inspect, maintain, and/or keep in good repair equipment at the Facility which would prevent future releases of substances which are regulated pursuant to Section 112(r), there have been releases to the air of substances regulated pursuant to Section 112(r) of the Act, Respondent has failed to comply with government regulations, and Respondent has failed to such steps as are necessary to prevent releases and future releases of regulated substances or other extremely hazardous substances. EPA has determined that Respondent failed to satisfy the general duty referred to in Paragraph 45 above, in that, among other things, Respondent has not designed and maintained a safe facility taking such steps as are necessary to prevent releases and future releases of a regulated substance or other extremely hazardous substance. Therefore, Respondent violated the provisions of Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1).

#### ORDER

50. Based upon the foregoing Findings of Fact and Conclusions of Law, and other information available to EPA, it is hereby ordered that Respondent comply with the requirements set forth below. All activities specified below shall be initiated by Respondent upon receipt of this Order and shall be completed no later than the periods mentioned for their completion, as specified herein.

#### Parties Bound

51. The provisions of this Order shall apply to Respondent and its officers, agents, servants, employees, and successors and to all persons, firms, and corporations acting under, through, or for Respondent.

#### Work to be Performed

52. Respondent shall take at least the following steps to identify hazards which may result from accidental releases of regulated substances and other extremely hazardous substances from the Facility, design and maintain a safe facility taking such steps as are necessary to prevent future releases, and minimize the consequences of future accidental releases:

- a. Within 30 days of the effective date of this Order, Respondent shall submit, for EPA review and approval, a schedule for the repair and maintenance or the replacement of the exhausters and back-up generators at the Facility referred to in the Findings of Fact and Conclusions of Law above. The schedule shall include the identity and qualifications of the parties who will be performing such repairs.
- b. After the exhausters and back-up generators have been repaired or replaced, Respondent shall submit a report to EPA documenting the work performed. The

report shall include the following certification, signed by an officer of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- c. Within 60 days of the effective date of this Order, Respondent shall have an assessment conducted into the root causes of the incidents of March 17, 2009 and March 31, 2010 at the Facility described in the Findings of Fact and Conclusions of Law above, including, but not limited to, an evaluation of the cause of the power and equipment failures, the Facility's mechanical integrity program, inspection protocols, performance tests, and operating procedures. This assessment shall include an evaluation of whether equipment, including exhausters and back-up generators, is in good repair and meets applicable codes, protocols, and standards, and should, at a minimum, address the exhausters, generators, pilot light, and any equipment which handles regulated substances. Any repairs or actions which have already been taken regarding these items should be documented in the assessment. The assessment shall be conducted by a professional engineer with appropriate experience in system design, operation, and maintenance. The name and resume of this engineer shall be provided to EPA for approval prior to the commencement of the assessment. The assessment shall include recommendations regarding safety and release prevention improvements, in accordance with current appropriate protocols and standards.
- d. Within 60 days of the effective date of this Order, Respondent shall submit to EPA a report which shall include the findings of the assessment performed pursuant to subparagraph 52.c., above, including any recommendations regarding safety and/or release prevention improvements, signed and certified by the engineer who conducted the assessment. Together with the report, Respondent shall submit to EPA a schedule for the performance of repairs or other actions recommended in this report.
- e. EPA will review the reports and schedules submitted pursuant to the subparagraphs above and will either approve them or direct Respondent to make changes or make further assessments and resubmit the document(s).
- f. Upon receipt of approval by EPA of the reports and schedules submitted pursuant to the subparagraphs above, including any with modifications, if necessary, Respondent shall proceed to make the repairs and take the other actions set forth in such reports in accordance with the approved schedules.
- g. Within 30 days of completion of the repairs and other activities required pursuant to subparagraphs 52.c. - f. above, Respondent shall submit a report to EPA

detailing the repairs and other activities conducted at the Facility. The report shall include a verification, stating that Respondent has complied with each of the requirements of subparagraphs 52.c. through f., above. The verification shall include the same certification required pursuant to subparagraph 52.b. above, also signed by an officer of Respondent.

- h. The submissions required by the above subparagraphs shall be made to:

Jean H. Regna, Esq.  
U.S. Environmental Protection Agency  
Office of Regional Counsel  
290 Broadway - 17th Floor  
New York, New York 10007-1866

and

Ellen Banner  
U.S. Environmental Protection Agency  
Emergency and Remedial Response Division  
Response and Prevention Branch  
2890 Woodbridge Avenue  
Edison, New Jersey 08837.

53. EPA will review the documentation submitted pursuant to subparagraphs 52 b. and g. above. If EPA determines that the actions taken or documentation submitted is insufficient to demonstrate compliance with the requirements of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, EPA shall so notify Respondent in writing. Respondent shall undertake all actions directed by EPA in its written notice within thirty (30) days of Respondent's receipt of EPA's comments, unless a greater period is specified in the notice.

54. Respondent shall provide EPA and its representatives, including contractors, with access to Respondent's Facility for the purpose of assessing Respondent's compliance with this Order and with the Act. Respondent shall also provide EPA and its representatives, including contractors, with access to all records relating to Respondent's implementation of this Order.

55. Respondent shall preserve all documents and information relating to the activities carried out pursuant to this Order for six years after completion of the work required by this Order. At the end of the six-year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

56. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law, or otherwise determined by EPA to be confidential or subject to restricted access under applicable law.

ENFORCEMENT

57. Section 113(a)(3) of the Act provides that upon failure to comply with an order issued under Section 113(a)(3)(B), the EPA Administrator may, *inter alia*, issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$25,000 per day of violation, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, this penalty maximum was increased to \$32,500 per day for violations occurring on or after March 15, 2004 through January 12, 2009, and to \$37,500 per day for violations occurring after January 12, 2009. Furthermore, for any person who knowingly violates the provisions of the Act, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both.

58. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations, and other legal requirements, including but not limited to Section 112(r) of the Act, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State, or local permit. Compliance with this Order shall not relieve Respondent of any liability for penalties pursuant to Section 113(d) of the Act or pursuant to any other federal, state, or local laws and regulations.

59. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, other extremely hazardous substance, or other substance on, at, or from Respondent's Facility. EPA reserves the right to bring an action against Respondent assessing or seeking penalties and/or other relief for any violations, including, without limitation, the violations referred to in the Findings of Fact and Conclusions of Law set forth above and/or any other violations of Section 112(r) of the Act. Respondent may be subject to an administrative or civil action for penalties and/or injunctive relief, pursuant to Sections 113(b) and (d) of the Act, based on the violations addressed by this Order and/or any other violations of Section 112(r) of the Act. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the Act, CERCLA, or any other law. EPA also reserves all of its rights to obtain access to Respondent's Facility and require Respondent's submission of information to EPA.

60. Nothing herein shall be construed as an extension of time for complying with any statutory or regulatory requirement under the Act or any other law.

EFFECTIVE DATE:  
OPPORTUNITY FOR A CONFERENCE

61. As used in this Order, the term "day" shall mean calendar day.

62. Respondent may request a conference with EPA concerning the violations alleged in, and the requirements of, this Order. Respondent has the right to be represented by counsel at such a conference. If a conference is held, this Order shall become effective the day after the conference, unless the effective date is extended by EPA. If a conference is not timely requested

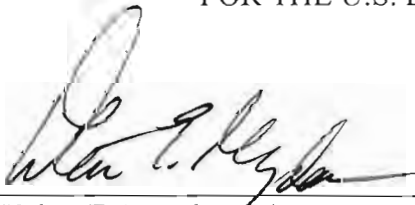
as set forth in Paragraph 63, below, the Order shall become effective eight (8) days after Respondent's receipt of the Order.

63. A request for a conference must be made in writing in time for EPA's receipt no later than seven (7) days after Respondent's receipt of this Order. The written request for a conference may be sent by fax, mail, or e-mail. The conference shall be held within five (5) days of the request unless that time period is extended by EPA, in its sole discretion. The conference may be conducted in person or by telephone.

64. The request for a conference and other inquiries concerning this Order should be addressed to:

Jean H. Regna, Esq.  
U.S. Environmental Protection Agency  
Office of Regional Counsel  
290 Broadway - 17th Floor  
New York, New York 10007-1866  
Phone: (212) 637-3164  
Fax: (212) 637-3104  
regna.jean@epa.gov

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



Walter E. Mugdan, Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

Date: April 28, 2010