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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. GIBSON WINE CO., Defendant.	Civil No. 1:15-cv-01900-AWI-SKO **AMENDED COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (hereafter "EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for penalties against Defendant Gibson Wine Co. ("Defendant") for violations of Sections 112(r)(1) and (7) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(1) and (7) , Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11004, at Defendant's winemaking facility located in Sanger, California.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the Defendant, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), and under 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a), because the Defendant does business in, and these claims arose within, this judicial district.

4. Notice of commencement of this action has been given to the State of California pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

PARTIES

5. Plaintiff is the United States of America, acting at the request of the EPA, an agency of the United States.

6. Defendant is a cooperative association organized under the laws of the State of California, and is doing business in this judicial district. Defendant is an owner and operator of a Facility that handles, stores, and uses anhydrous ammonia.

7. Defendant is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

STATUTORY AND REGULATORY FRAMEWORK

A. Clean Air Act

8. The purpose of Section 112(r) of the CAA is to provide requirements and standards to prevent and minimize accidental releases of air pollutants: "It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance." 42 U.S.C. § 7412(r)(1).

9. The term "accidental release" is defined by CAA Section 112(r)(2)(A), 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

10. An "extremely hazardous substance" is any chemical which may, as a result of short-term exposures because of releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity. S. Rep. No. 101- 228 at 211 (1989). Extremely hazardous substances include, but are not limited to, substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals on the list of extremely hazardous substances published under Section 302 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11002, at 40 C.F.R. Part 355, Appendices A and B.

11. Anhydrous ammonia (also known as NH_3) is a listed extremely hazardous substance under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) and 40 C.F.R. § 68.130. Anhydrous ammonia is also a "regulated substance" because it is listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) and 40 C.F.R. § 68.130.

12. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), mandates three distinct general duty of care requirements for owners and operators of stationary sources producing, processing, handling, or storing listed hazardous substances. In pertinent part, Section 112(r)(1) of the CAA provides:

> The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as Section 654 of Title 29 [29 U.S.C. § 654)] to identify hazards

> which may result from such releases 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.

13. Violations of industry standards, including, but not limited to, the industry standards described below in paragraph 14, and state law, including California's Accidental Release Prevention Program ("CalARP"), Cal. Code Regs. tit. 19, div. 2, ch. 4.5, are considered when identifying violations of the CAA's general duty clause with respect to ammonia refrigeration systems.

14. In light of the hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards for recognized and generally accepted good engineering practices in the ammonia refrigeration industry. The International Institute of Ammonia Refrigeration ("IIAR") publishes bulletins and guidance documents for ammonia refrigeration systems, including without limitation: the 2005 Ammonia Refrigeration Management Program ("IIAR Ammonia Refrigeration Manual"), intended for systems containing less than 10,000 pounds of ammonia; IIAR Bulletin No. 109, "Guidelines for IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System (1997)"; IIAR Bulletin No. 110, "Guidelines for Start-Up, Inspection, and Maintenance of Ammonia Mechanical Refrigerating Systems (rev. 2002)"; and IIAR Bulletin No. 114, "Guidelines for Identification of Ammonia Refrigeration Piping and System Components 1991." IIAR, in collaboration with the American National Standards Institute ("ANSI"), also issues "American National Standards" for ammonia refrigeration systems, including without limitation, "Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems ("ANSI/IIAR 2-2008") and "IIAR Process Safety Management Guidelines for Ammonia Refrigeration (1998)" ("IIAR PSM Guidelines"). The American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE"), in collaboration with ANSI, also issues refrigeration standards, including without limitation the "Safety Standard for Refrigeration Systems" ("ANSI/ASHRAE Standard 15-2013").

15. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), provides that the Administrator of the EPA is authorized to promulgate regulations requiring owners or operators

of a stationary source at which an extremely hazardous substance is present in more than a threshold amount to, among other things, prepare and implement a risk management plan to detect and prevent or minimize accidental releases of extremely hazardous substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

16. Anhydrous ammonia has a regulatory threshold amount of 10,000 pounds. 40 C.F.R. § 68.130 Table 1.

17. EPA has promulgated regulations to implement Section 112(r)(7), codified at 40 C.F.R. Part 68 ("RMP Regulations"), that require owners and operators of stationary sources that have more than a threshold quantity of a regulated substance in a process to develop and implement a risk management program which must be described in a risk management plan submitted to EPA and which includes, among other things, a management system, a hazard assessment, and a prevention program.

18. A "stationary source" means, in relevant part, "any buildings, structures, equipment, installations or substance emitting stationary activities . . . from which an accidental release may occur." Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C).

19. "Process" is defined in 40 C.F.R. § 68.3 to mean "any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or any combination of these activities." "Covered Process" means "a process that has a regulated hazardous substance present in more than a threshold quantity as determined under [40 C.F.R.] § 68.115." 40 C.F.R. § 68.3.

20. A Process containing at least 10,000 pounds of anhydrous ammonia meets the threshold quantity under 40 C.F.R. § 68.130.

21. The regulations at 40 C.F.R. Part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3, and set forth specific requirements for owners and operators of stationary sources with processes that fall within the respective programs.

22. Pursuant to 40 C.F.R. § 68.10(d), a Covered Process is subject to Program 3 requirements if the process does not meet one or more of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b), and if either of the following conditions is met: (a) the process is listed in one of the specific North American Industry Classification System codes found at 40 C.F.R. § 68.10(d)(1); or (b) the process is subject to the United States Occupational Safety and Health Administration ("OSHA") process safety management standard set forth in 29 C.F.R. § 1910.119. A stationary source that has had an accidental release of a regulated substance within five years is not eligible for Program 1. 40 C.F.R. § 68.10(b).

23. Pursuant to 40 C.F.R. § 68.12(d) the owner or operator of a stationary source that is subject to Program 3 prevention requirements must undertake certain tasks including, but not limited to: development and implementation of a management system (as provided in 40 C.F.R. § 68.15); the development and implementation of prevention program requirements, which include the compilation of process safety information, written standard operating procedures, training, a mechanical integrity program, management of change procedures, and pre-startup safety review procedures (as provided in 40 C.F.R. §§ 68.65-68.87); and the development and implementation of an emergency response program as provided in 40 C.F.R. §§ 68.90-68.95

B. CERCLA

24. Section 103 of CERCLA requires that any person in charge of a facility "shall, as soon as he has knowledge of any release . . . of a hazardous substance . . . in quantities equal to or greater than those determined pursuant to [section 102 of CERCLA] immediately notify the National Response Center [("NRC")]." 42 U.S.C. § 9603(a).

25. Ammonia is a listed hazardous substance with a reportable quantity of 100 pounds. 40 C.F.R. § 302.4.

C. EPCRA

26. Section 304 of EPCRA requires the owner or operator of a facility where hazardous chemicals are produced, used, or stored to immediately provide the State Emergency Response Commission ("SERC") with notice of releases of CERCLA hazardous substances or extremely hazardous substances in excess of reportable quantities.

27. Ammonia is listed as an extremely hazardous substance under EPCRA with a reportable quantity of 100 pounds. 40 C.F.R. Part 355, Appendices A and B.

GENERAL ALLEGATIONS

28. At all relevant times, Defendant owned and operated a winemaking facility located at 1720 Academy Avenue, Sanger, California ("the Facility").

29. At all relevant times, the Facility has been a "stationary source" as defined in CAA Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C).

30. At all relevant times, Defendant maintained refrigeration systems at the Facility and those systems utilized, processed, handled, or stored anhydrous ammonia, a "regulated substance" under CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3).

31. On September 11, 2012, the Facility experienced a 284-pound release of anhydrous ammonia from its ammonia refrigeration system. The incident occurred when a worker attempted to defrost an ammonia chiller and opened the oil valve instead of the hot gas valve, causing ammonia to release into the environment.

32. As a result of the release, an ammonia cloud formed. The worker was unable to close the valve. That worker called for an evacuation of the building. One contract employee was overcome by the ammonia cloud. The evacuated employees attempted to rescue the contract employee, but could not locate necessary emergency response equipment. The contract employee died from exposure to the ammonia.

33. The release of anhydrous ammonia from the Facility on September 11, 2012 was above the reportable quantity of 100 pounds pursuant to 40 C.F.R. § 302.4. Yet, Defendant failed to notify the NRC for 37 hours. Likewise, Defendant failed to notify the SERC, although the SERC received notification of the release from the NRC 37 hours after the release.

34. In response to the release, EPA conducted an inspection of the Facility on January 8, 2013. During the inspection, the inspection team discovered evidence of a number of violations of the CAA, EPCRA and CERCLA.

FIRST CLAIM FOR RELIEF: SECTION 112(r)(7) OF THE CAA

(Federal Risk Management Program Regulations 40 C.F.R. Part 68)

35. Paragraphs 1-34 are incorporated herein by reference.

36. The regulations at 40 C.F.R. Part 68, promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), require owners or operators of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. The owner or operator of a stationary source must submit an initial Risk Management Plan by the date on which a regulated substance is first present at the facility above the threshold quantity in a process. 40 C.F.R. § 68.150(b)(3).

37. Upon information and belief, during the relevant time period, Defendant used, handled, or stored anhydrous ammonia at its Facility in a Covered Process in amounts above the threshold quantity of 10,000 pounds. Hazardous Material Inventory forms dated 2009 and 2012 and prepared by the general manager for Defendant list the average daily amount of anhydrous ammonia at between 13,600 and 14,000 pounds. A document dated September 11, 2012 at 11:14 a.m. and entitled "Anhydrous Ammonia Inventory" lists vessels such as the "Silver Bullet," which is the name of a vessel owned by Defendant, and lists the current level of anhydrous ammonia in each vessel, totaling approximately 15,564 pounds. The State of California Division of Occupational Safety and Health included the following statement in its investigation report pertaining to the September 11, 2012 anhydrous ammonia release from the Facility: "The employer [Gibson Wine] calculated the refrigerant charge at the facility was 4,600 gallons or 23,640 pound[s] of anhydrous ammonia that is well above the threshold quantity 10,000 pounds which invokes requirements of [State process safety management regulations.]"

38. Upon information and belief, at the time of the release of 284 pounds of anhydrous ammonia on September 11, 2012, the Facility had more than the threshold quantity of

anhydrous ammonia in a process at the Facility and was subject to the RMP Regulations at 40 C.F.R. Part 68.

39. Defendant's refrigeration processes at the Facility are a Covered Process under 40 C.F.R. Part 68 because a regulated hazardous substance (anhydrous ammonia) is present in more than a threshold quantity (10,000 pounds).

40. Defendant in a document entitled "RMP for PROGRAM 3 ANHYDROUS AMMONIA" stated with regard to an assessment of the worst case release assessment that: "The worst case scenario reaches 0.8 miles [cite omitted]. The resulting distance to the endpoint extends offsite, and public receptors are within the distance to the endpoint." As the distance to a toxic endpoint for a worst-case release assessment is 0.8 miles, which is greater than the distance to a public receptor, Defendant's process is not eligible for Program 1 under 40 C.F.R. § 68.10(b).

41. The Covered Process at the Facility is subject to requirements of 40 C.F.R. Part 68 found at Subpart D - Program 3 Prevention Program, under 40 C.F.R. § 68.10(d), because it is not eligible for Program 1 and is also subject to the OSHA process safety management standards set forth in 29 C.F.R. § 1910.119, which apply to any process which involves a chemical at or above the threshold quantity. The threshold quantity for anhydrous ammonia under OSHA is 10,000 pounds.

Violation 1- Failure to Submit a Risk Management Plan to EPA

42. 40 C.F.R. § 68.150 required Defendant to submit to EPA a Risk Management Plan ("RMP") which contains all of the information required by 40 C.F.R. §§ 68.155-185. Defendant failed to submit an RMP to EPA in violation of 40 C.F.R. § 68.150.

Violation 2 – Inaccurate Maximum Intended Inventories

43. 40 C.F.R. § 68.65(a) required Defendant to complete a compilation of process safety information ("PSI"), and the required PSI for technology of the process specifically includes the maximum intended inventory. 40 C.F.R. § 68.65(c)(1)(iii). The maximum intended inventories for anhydrous ammonia reviewed during the January 8, 2013 inspection were not

accurate. The ammonia inventory calculation, including all vessels and piping, was not properly performed to show the total amount of ammonia in the Covered Process. Defendant failed to maintain accurate information concerning the maximum intended inventories in violation of 40 C.F.R. § 68.65(c)(1)(iii).

Violation 3 – Inaccurate Codes and Standards

44. 40 C.F.R. § 68.65(a) required Defendant to complete a compilation of PSI, and the required PSI for equipment in process specifically includes the design codes and standards employed. 40 C.F.R. § 68.65(d)(1)(vi). A document found at the Facility during the January 8, 2013 inspection entitled "RMP for PROGRAM 3 ANHYDROUS AMMONIA" and signed by the Facility manager, stated that the anhydrous ammonia system was designed in accordance with NFPA 58, a Liquefied Petroleum Gas Code, which is not applicable to ammonia processes. Defendant failed to compile and maintain records and documentation describing the codes and standards used to design, build, and operate its ammonia processes in violation of 40 C.F.R. § 68.65(d)(1)(vi).

Violation 4 – Failure to Comply with Good Engineering Practices

45. 40 C.F.R. § 68.65(d)(2) required Defendant to document that its process equipment complies with recognized and generally accepted good engineering practices. When EPA inspected the Facility on January 8, 2013, Defendant's equipment was not labeled adequately, contrary to industry standards requiring all ammonia piping to have appropriate markers to indicate the use of the pipe and arrows to indicate the direction of the flow. Industry standards require all piping mains, headers, and branches to be identified as to the physical state of the refrigerant, the relative pressure, and the direction of flow. IIAR Bulletin No. 109, Sec. 4.7.6; ANSI/IIAR 2-2008, Sec. 10.5; IIAR Bulletin No. 114. Additionally, lines, emergency isolation valves, and safety systems must be adequately labeled. IIAR Ammonia Refrigeration Manual, Sec. 4.2.

46. Defendant failed to document that its ammonia refrigeration equipment was adequately labeled in compliance with recognized and generally accepted good engineering practices, in violation of 40 C.F.R. § 68.65(d)(2)

Violation 5 – Inadequate Process Hazard Analysis

47. 40 C.F.R. § 68.67(a) required Defendant to perform a process hazard analysis to identify, evaluate and control the hazards involved in the anhydrous ammonia process. At the time of the September 11, 2012 release, Defendant failed to include in a Process Hazard Analysis the identification, evaluation, and control of the hazards associated with the release of anhydrous ammonia from an uncontrolled oil drain line, in violation of 40 C.F.R. § 68.67(a).

Violation 6- Failure to Have Operating Procedures that Address Engineering Controls

48. 40 C.F.R. § 68.69(a)(3)(ii) required Defendant to develop and implement written operating procedures which address the precautions necessary to prevent exposure, including engineering controls. One precaution or engineering control necessary to prevent exposure to anhydrous ammonia when draining oil from the covered process would be a self-closing or manual quick-closing emergency stop valve, which is used throughout the refrigeration industry. At the time of the September 11, 2012 release, Defendant had failed to develop and implement an operating procedure that included the use of a self-closing or manual quick-closing emergency stop valve on the oil drain lines in the Covered Process in violation of 40 C.F.R. § 68.69(a). At the time of the September 11, 2012 release, Defendant also had failed to prepare and implement written operating procedures for thawing chillers and draining oil from the anhydrous ammonia chillers at the Facility in violation of 40 C.F.R. § 68.69(a).

*Violation 7 – Failure to Adequately Train and Evaluate Employee*s

49. 40 C.F.R. § 68.71(a) required Defendant to train each employee in the written operating procedures required by 40 C.F.R. § 68.69, which included the procedures for thawing the chillers and draining oil from the anhydrous ammonia chillers. At the time of the September 11, 2012 release, Defendant had no such written operating procedure in place and its employees were not trained or evaluated in those procedures in violation of 40 C.F.R. § 68.71(a). 40 C.F.R. § 68.71(b) and (c) also required Defendant to provide refresher training for the operating procedures every three years and to document that training. At the time of the September 11, 2012 release, Defendant had failed to provide refresher training to all of its employees every

three years and had failed to document all required training in violation of 40 C.F.R. § 68.71(b) and (c).

Violation 8 – Failure to Inspect and Maintain Mechanical Integrity of Process Equipment

50. 40 C.F.R. § 68.73(d) and (e) required Defendant to conduct periodic inspections of and testing on the process equipment at the Facility, including relief and vent systems per 40 C.F.R. § 68.73(a)(3), and to correct all deficiencies in equipment which are outside acceptable limits. At the time of the September 11, 2012 release Defendant had not been conducting periodic inspections of its process equipment and had not been maintaining its pressure relief equipment, compromising the safety and integrity of the Facility. These failures were in violation of 40 C.F.R. § 68.73(d) and (e).

Violation 9 – Failure to Conduct a Compliance Audit

51. 40 C.F.R. § 68.79(a) required Defendant to conduct an audit every three years to verify that the procedures and practices developed pursuant to the requirements of Subpart D- Program 3 were adequate and were being followed. Defendant failed to perform any compliance audit under Subpart D- Program 3 in violation of 40 C.F.R. § 68.79(a). Although Defendant produced a 2009 compliance audit performed for State of California requirements, this compliance audit failed to meet the requirements of Subpart D- Program 3 and was more than three years old at the time of the September 11, 2012 release.

52. Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and as amended by the Debt Collection Improvements Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and pursuant to EPA's Civil Monetary Penalty Inflation Adjustment Rule ("Inflation Adjustment Rule"), 40 C.F.R. Part 19, promulgated pursuant the DCIA, Defendant is liable for assessment of a civil penalty of up to $27,500 per day for each violation that occurred after January 30, 1997 through March 15, 2004, up to $32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009, up to $37,500 per day for each violation that occurred after January 12, 2009, and up to $44,539 per day for each violation that occurred on or after November 2, 2015.

SECOND CLAIM FOR RELIEF: SECTION 112(r)(1) OF THE CAA

(Violations of the General Duty of Care)

53. Paragraphs 1-34 are incorporated herein by reference.

Violation 10- Inadequate Component Labeling

54. When EPA inspected the Facility on January 8, 2013, Defendant's equipment was not labeled adequately, contrary to industry standards requiring all ammonia piping to have appropriate markers to indicate the use of the pipe and arrows to indicate the direction of the flow. Industry standards require all piping mains, headers, and branches to be identified as to the physical state of the refrigerant, the relative pressure, and the direction of flow. IIAR Bulletin No. 109, Sec. 4.7.6; ANSI/IIAR 2-2008, Sec. 10.5; IIAR Bulletin No. 114. Additionally, lines, emergency isolation valves, and safety systems must be adequately labeled. IIAR Ammonia Refrigeration Manual, Sec. 4.2.

55. Gibson's failure to adequately label its ammonia refrigeration equipment is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation 11 - Inaccurate Ammonia Inventory

56. At the time of EPA's January 8, 2013 inspection, Defendant's maximum inventories for its ammonia processes were inaccurate. The ammonia inventory calculation, including all vessels and piping, had not been properly performed to show the amount of ammonia in the systems. CalARP and industry standards require facilities to compile and maintain the maximum intended ammonia inventory in their ammonia refrigeration system. IIAR Ammonia Refrigeration Manual, Sec. 3.3; IIAR Bulletin No. 110, Sec. 4; Cal. Code Regs. tit. 19, § 2755.1.

57. Gibson's failure to maintain accurate ammonia inventories is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility

taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation 12 - Inadequate Documentation of Codes and Standards

58. At the time of EPA's January 8, 2013, inspection, Defendant failed to adequately document the codes and standards used to design, build, and operate its ammonia processes. A document found onsite stated that the ammonia system was designed in accordance with NFPA 58, a Liquefied Petroleum Gas Code, not applicable to ammonia processes. CalARP and industry standards require owners and operators to compile and maintain records and documentation describing the codes and standards used to design, build, and operate its ammonia processes. IIAR Bulletin No. 109; IIAR Bulletin No. 110, Sec. 4; IIAR Ammonia Refrigeration Manual, Sec. 3; Cal. Code Regs. tit. 19, § 2755.1.

59. Defendant's failure to adequately document the codes and standards used to design, build, and operate its ammonia processes is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, and (2) design and maintain a safe facility taking such steps as are necessary to prevent releases. 42 U.S.C. § 7412(r)(1).

Violation 13 - Failure to use Acceptable Engineered Systems

60. Defendant failed either to keep the oil drain line on the ammonia chiller plugged except for when draining oil, or to install a deadman valve on the oil drain line at the time of the release. Industry standards require that, prior to performing an oil drain line procedure, the vessel should be equipped with a self-closing or manual quick-closing emergency stop valve. IIAR 2-2008, sec. 14.2. The ammonia release would not have occurred if Defendant had either kept the oil drain line on the ammonia chiller plugged except for when draining oil, or installed a deadman valve on the ammonia chiller, in compliance with industry standards.

61. Defendant's failure to keep the oil drain line plugged or install a deadman valve is a violation of Section 112(r)(1) of the CAA's requirements to (1) design and maintain a safe

facility taking such steps as are necessary to prevent releases, and (2) minimize the consequence of releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation 14- Failure to Prepare and Implement Written Standard Operating Procedures

62. Defendant failed to prepare and implement written standard operating procedures for thawing and draining oil from the ammonia chillers in place. CalARP requires facility owners to prepare "written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with safety information for that process." Cal. Code Regs. tit. 19, § 2755.3. Industry standards require clear, written instructions for safely conducting activities associated with each covered process. IIAR Bulletin No. 110, Sec. 5.2.2; IIAR Ammonia Refrigeration Manual, Sec. 4. The September 11 release could have been avoided if the Defendant had maintained written standard operating procedures for thawing or draining oil from the chiller.

63. Defendant's failure to prepare and implement written standard operating procedures is a violation of Section 112(r)(1) of the CAA's requirements to (1) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (2) minimize the consequence of releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation 15 - Failure to Train and Evaluate Employees

64. Defendant failed to adequately train and evaluate employees who operated the ammonia chiller valves and who worked in the vicinity of the ammonia chiller valves. CalARP requires comprehensive training and testing of each employee operating a covered process, including periodic refresher training. Cal. Code Regs. tit. 19, § 2755.4. Industry standards require adequate training and refresher training for all employees involved in process equipment operation, equipment maintenance, and emergency response planning, and for all employees who work in areas where hazardous chemicals are present. IIAR Ammonia Refrigeration Manual, Sec. 9. Training must be documented and the employee's understanding of the training must be verified. IIAR Bulletin No. 110, Sec. 5.2.3. At the time of the September 11, 2012 release, Defendant had no formal training program in place that addressed ammonia and chiller process

operations. Defendant's failure to implement a formalized training and evaluation program for employees who operate the chiller valves caused or contributed to the ammonia release.

65. Defendant's failure to adequately train and evaluate its employees is a violation of Section 112(r)(1) of the CAA's requirements to (1) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (2) minimize the consequence of releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation 16 - Failure to Inspect and Maintain Mechanical Integrity of Process Equipment

66. Defendant failed to inspect and maintain the mechanical integrity of the process equipment. CalARP requires owners and operators to prepare and implement procedures to maintain the mechanical integrity of process equipment, including equipment training, inspections, and testing. Cal. Code Regs. tit. 19, § 2755.5(a)-(d). Industry standards require an annual mechanical integrity inspection and a five-year maintenance audit. IIAR Bulletin No. 109, Sec. 5; IIAR Bulletin No. 110, Sec. 6. Additionally, industry standards require testing, replacement, and inspection of pressure relief valves. IIAR Bulletin 109, Sec. 4.9.7; IIAR Bulletin 110, Sec. 6.5.4; ANSI/IIAR 2-2008, Sec. 12.2. At the time of the September 11, 2012 release, Defendant had not been conducting annual mechanical integrity inspections or five year maintenance audits, compromising the safety and integrity of the Facility. Additionally, during the January 8, 2013 inspection, inspectors identified pressure relief equipment that was overdue for replacement.

67. Defendant's failure to inspect and maintain the mechanical integrity of its equipment is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequence of releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation 17- Failure to Conduct a Compliance Audit

68. Defendant failed to conduct a compliance audit at least every three years. CalARP requires owners and operators to certify that they have evaluated compliance with the

provisions of CalARP at least every three years to verify that the procedures and practices developed under CalARP are adequate and are being followed. Cal. Code Regs. tit. 19, § 2755.6. At the time of the September 11, 2012 release, Defendant had not conducted a compliance audit within the past three years.

69. Defendant's failure to conduct a compliance audit is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, and (2) design and maintain a safe facility taking such steps as are necessary to prevent releases. 42 U.S.C. § 7412(r)(1).

Violation 18 - Failure to Prepare and Implement an Adequate Emergency Response Plan

70. Defendant failed to prepare and implement an adequate emergency response plan. Industry standards require up-to-date, facility-specific emergency response plans that accurately describe the facility and the potentially affected population. The emergency response plan must include, among other elements, specific evacuation procedures and routes, procedures for accounting for employees, employee rescue procedures, and reporting requirements, and should provide for emergency response exercises. IIAR Ammonia Refrigeration Manual, Sec. 7.2. Specifically, the plan must identify procedures for responding to an ammonia release, including system shut-down, emergency ventilation, and coordination with emergency responders. IIAR Ammonia Refrigeration Manual, Sec. 7.3. Defendant failed to develop and maintain an emergency response plan that adequately identified escape routes.

71. Defendant's failure to prepare and implement an adequate emergency response plan and associated training is a violation of Section 112(r)(1) of the CAA's requirement to minimize the consequence of releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation 19 - Failure to Provide Adequate Emergency Response Training and Equipment

72. Defendant failed to provide adequate emergency response equipment and training. Industry standards require owners and operators to provide initial and refresher training, and exercises, regarding the hazards associated with ammonia, safe work practices, and the emergency response plan. IIAR Ammonia Refrigeration Manual, Sec. 9.3. Additionally,

industry standards require owners and operators to provide employees with suitable emergency response equipment, including respiratory protection. ANSI/ASHRAE Standard 15-2013, 28-29. The consequences of the ammonia release could have been minimized if Defendant had provided adequate emergency response equipment and training.

73. Defendant's failure to provide adequate emergency response training and equipment is a violation of Section 112(r)(1) of the CAA's requirement to minimize the consequence of releases which do occur. 42 U.S.C. § 7412(r)(1).

74. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by 28 U.S.C. § 2461 and 31 U.S.C. § 3701, provides that the Administrator of EPA shall, in the case of a person who is the owner or operator of a major stationary source, and may, in the case of any other person, whenever such person violates any requirement or prohibition of Subchapter I of the Act (42 U.S.C. §§ 7401-7515), commence a civil action for injunctive relief and to assess and recover a civil penalty of up to $27,500 per day for each such violation.

75. Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and as amended by the Debt Collection Improvements Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and pursuant to EPA's Civil Monetary Penalty Inflation Adjustment Rule ("Inflation Adjustment Rule"), 40 C.F.R. Part 19, , promulgated pursuant the DCIA, Defendant is liable for assessment of a civil penalty of up to $27,500 per day for each violation that occurred after January 30, 1997 through March 15, 2004, up to $32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009, up to $37,500 per day for each violation that occurred after January 12, 2009, and up to $44,539 per day for each violation that occurred on or after November 2, 2015.

THIRD CLAIM FOR RELIEF: SECTION 103 OF CERCLA

(Federal Notification Requirements)

Violation 20 - Failure to Notify the National Response Center

76. Paragraphs 1-34 are incorporated herein by reference.

77. Section 103 of CERCLA requires that any person in charge of a facility "shall, as soon as he has knowledge of any release . . . of a hazardous substance . . . in quantities equal to

or greater than those determined pursuant to [section 102 of CERCLA] immediately notify the National Response Center." 42 U.S.C. § 9603(a).

78. Ammonia is a listed hazardous substance with a reportable quantity of 100 pounds. 40 C.F.R. § 302.4.

79. The September 11, 2012 release of 284 pounds of anhydrous ammonia was a reportable release under Section 103 of CERCLA. However, Defendant did not notify the NRC of the release until 37 hours after the incident.

80. Section 109(c) of CERCLA provides as follows:

> The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation (or failure or refusal) continues in the case of . . . (1) A violation of the notice requirements of section 9603(a) or (b) of this title . . . . In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than $75,000 for each day during which the violation (or failure or refusal) continues. 42 U.S.C. § 9609(c).

81. Under the DCIA and the Inflation Adjustment Rule, the $25,000 per day penalty has been increased to $37,500 per day, and the $75,000 per day penalty for subsequent violations has been increased to $107,500 per day under Section 109(c) of CERCLA for violations occurring after January 12, 2009. 73 Fed. Reg. 75,340 (Dec. 11, 2008).

FOURTH CLAIM FOR RELIEF: SECTION 304 OF EPCRA

(Federal Emergency Notification for Release of an Extremely Hazardous Substance)

Violation 21 - Failure to Notify the State Emergency Response Commission

82. Paragraphs 1-34 are incorporated herein by reference.

83. Section 304 of EPCRA requires the owner or operator of a facility where hazardous chemicals are produced, used, or stored to immediately provide the SERC with notice of releases of CERCLA hazardous substances or extremely hazardous substances in excess of reportable quantities.

84. Ammonia is listed as an extremely hazardous substance under EPCRA with a reportable quantity of 100 pounds. 40 C.F.R. Part 355, Appendices A and B.

85. The September 11, 2012 release of 284 pounds of anhydrous ammonia was a reportable release under Section 304 of EPCRA. However, Defendant never notified the

California Emergency Management Agency ("CEMA"), now the California Office of Emergency Services, which functions as the SERC in California. CEMA was not notified by the NRC of the release until 37 hours after the incident.

86. Section 325(b)(3) of EPCRA provides as follows:

> The Administrator may bring an action in the United States District court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation, the amount of such penalty may be not more than $75,000 for each day during which the violation continues. 42 U.S.C §11045(b)(3)

87. Under the DCIA and the Inflation Adjustment Rule the $25,000 per day penalty has been increased to $37,500 per day, and the $75,000 per day penalty for subsequent violations has been increased to $107,500 per day under Section 325(b)(3) of EPCRA for violations occurring after January 12, 2009. 73 Fed. Reg. 75,340 (Dec. 11, 2008).

RELIEF SOUGHT

WHEREFORE, Plaintiff, the United States, respectfully prays that this Court provide the following relief:

1. Enjoin Defendant from operating the Facility, except in accordance with the CAA; with Section 103 of CERCLA; and with Sections 304 and 312 of EPCRA, and with implementing regulations under each statute;

2. Order Defendant to pay a civil penalty of $37,500 per day for each day of violation of Section 112(r) of the CAA that occurred after January 12, 2009 and $44,539 per day for each day of violation that occurred on or after November 2, 2015;

3. Order Defendant to pay a civil penalty of $37,500 per day for each day of violation of CERCLA;

4. Order Defendant to pay a civil penalty of $37,500 per day for each day of violation of EPCRA;

5. Award the United States its costs of this action; and

6. Grant the United States such further relief as this Court may deem just and proper.

Dated: November 25, 2016.

FOR THE UNITED STATES:

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