

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA, THE
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Plaintiffs,

v.

MCWANE, INC.

Defendant.

Civil Action No. []

CV-15-JHE-1504-5

COMPLAINT

Plaintiffs, the United States of America, by the 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 ("EPA") and the Alabama Department of Environmental Management ("ADEM"), an agency of the State of Alabama ("State") authorized to file suit in the name of the State to enforce both state and federally enforceable environmental protection statutes, regulations and permits issued by ADEM, through the undersigned attorneys, file this Complaint against McWane, Inc. (hereafter "McWane" or "Defendant") and allege as follows:

NATURE OF ACTION

1. Plaintiffs bring this action under the Clean Air Act (“CAA”), 42 U.S.C. § 7401 et seq.; Ala. Admin. Code div. 335-5 et seq.; the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq.; Ala. Admin. Code div. 335-6 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq.; Ala. Admin. Code div. 335-14 et seq.; the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11001 et seq.; and the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 et seq., to obtain civil penalties for violations of each of these statutes, as well as their implementing permits and regulations.

2. This civil action relates to violations of the CAA, CWA, RCRA, EPCRA, and TSCA at the McWane facility located in Birmingham, Alabama (“McWane Cast Iron Pipe Facility” or “the Alabama Facility”), and the McWane facility located in Phillipsburg, New Jersey (“McWane Ductile – New Jersey,” f/k/a Atlantic States Cast Iron Pipe, or “the New Jersey Facility”) (together “the Facilities”), both of which have been owned and operated by McWane. At all times relevant to the Complaint, the Facilities manufactured ductile iron pipes.

3. The claims in this Complaint, for ease of pleading, are primarily alleged using the applicable federal citations.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Sections 301, 309 and 402 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1342; Section 3008 of RCRA, 42 U.S.C. § 6928; Sections 313 and 325 of EPCRA, 42 U.S.C. §§ 11023 and 11045; Section 17 of TSCA, 15 U.S.C. § 2616; and 28 U.S.C. § 1367.

5. The Northern District of Alabama is an appropriate choice of venue in this action pursuant to 28 U.S.C. § 1391(b) and (c), because McWane conducts business at a location in this district, which is also its corporate headquarters, and because some of the events giving rise to the claims alleged in this Complaint occurred in this district. This venue is consistent with Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 325 of EPCRA, 42 U.S.C. § 11045; and Section 17 of TSCA, 15 U.S.C. § 2616.

6. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519; Section 305 of the CAA, 42 U.S.C. § 7605; Section 309 of the CWA, 33 U.S.C. § 1319; Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 325 of EPCRA, 42 U.S.C. § 11045; and Section 17 of TSCA, 15 U.S.C. § 2616.

7. ADEM is an agency of the State of Alabama authorized to file suit in the name of the State to enforce state environmental protection statutes, regulations, and permits issued by ADEM, Ala. Code § 22-22A-5(12) (2006 Rplc. Vol.). Joinder is authorized under the Federal Rules of Civil Procedure 19 and 20. The State is also authorized to sue to enforce the CAA pursuant to its citizen suit provisions, 42 U.S.C. §§ 7604 and 7602. ADEM joins in the claims relating to the Alabama Facility.

NOTICE

8. Notice of the commencement of this action has been given to McWane and the States of Alabama and New Jersey pursuant to Section 113(a) of the CAA, 42 U.S.C. § 7413(a); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

DEFENDANT

9. Defendant is a corporation organized and existing under the laws of the State of Delaware, with corporate headquarters in Birmingham, Alabama, and is authorized to do business in the State of Alabama.

10. McWane's primary products include cast iron pipes, valves, fittings, fire hydrants, propane and compressed air tanks, and other similar products, which are marketed mainly in the United States to distributors, wholesalers, and retailers who deal in pipes.

11. At all times relevant to this action, McWane has owned and/or operated the Facilities located in Alabama and New Jersey, as follows:

McWane Ductile – New Jersey
183 Sitgreaves Street
Phillipsburg, NJ 08865

McWane Cast Iron Pipe
1201 Vanderbilt Road
Birmingham, AL 35234

12. At all times relevant to this action, the Facilities operated under Standard Industrial Classification ("SIC") Code 3321 (gray and ductile iron foundries), within the meaning of "facility" in Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26.

13. At all times relevant to this action, the Alabama Facility and the New Jersey Facility were each a "major emitting facility," as that term is defined by Section 302 of the CAA, 42 U.S.C. § 7602.

14. At all times relevant to this action, the Alabama Facility and the New Jersey Facility were each a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

15. At all times relevant to this action, the Facilities have been “solid waste management facilities” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29).

16. Defendant is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e); Sections 311(a)(7) and 502(5) of the Clean Water Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5); Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and Section 3(11) of TSCA, 15 U.S.C. § 2602(11).

DESCRIPTION OF THE FACILITIES

17. McWane Ductile – New Jersey, located in Phillipsburg, New Jersey, manufactures ductile iron pipe. McWane Ductile - New Jersey is a division of McWane, Inc.

18. The McWane Cast Iron Pipe Facility, located in Birmingham, Alabama, manufactured ductile iron pipe. The Alabama Facility has shut down.

DEFENDANT’S FACILITIES’ NPDES PERMITS

19. At all times relevant to this action, the Facilities held NPDES permits that established effluent limitations for the Facilities, as well as monitoring and reporting requirements.

FACILITY AUDITS AND INSPECTIONS

20. Between 2001 and 2004, Defendant conducted multi-media self-audits of the Facilities listed in Paragraph 11, and of other McWane facilities not part of this action.

21. The United States filed a Complaint on July 14, 2010, in Civil Action No. 10-CV-1902 (“2010 Complaint”), alleging civil environmental violations at other McWane facilities based upon the audits conducted by McWane from 2001 to 2004, and simultaneously lodged a Consent Decree in this Court (“2010 Consent Decree”). The Court subsequently entered the 2010

Consent Decree following public comment, thereby resolving the claims alleged in the 2010 Complaint.

22. The 2010 Complaint also alleged two EPCRA claims relating to the New Jersey Facility. However, claims relating to the Alabama and New Jersey Facilities that are the subject of this Complaint, dating from the same period, were not included in the 2010 Complaint or resolved by the 2010 Consent Decree.

Statutory and Regulatory Background (CAA)

23. The CAA, 42 U.S.C. §§ 7401 *et seq.*, and the regulations promulgated thereunder, establish a statutory and regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

The National Ambient Air Quality Standards

24. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such pollutant, Section 109 of the CAA, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards ("NAAQS") requisite to protect the public health and welfare. Pursuant to CWA Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified and promulgated NAAQS for each such pollutant, codified at 40 C.F.R. § 50.15.

25. Under Section 107(d) of the CAA, 42 U.S.C. § 7407(d), each State is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to

insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is designated as “unclassifiable.”

Prevention of Significant Deterioration Requirements

26. Part C of Title I of the CAA, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (“PSD”) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions and the implementing regulations at 40 C.F.R. Part 52 are herein referred to as the “PSD regulations.”

27. Sections 110(a) and 161 of the CAA, 42 U.S.C. §§ 7410(a) and 7471, require states to adopt a state implementation plan (“SIP”) that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

28. A state may comply with Sections 110(a) and 161 of the CAA, 42 U.S.C. §§ 7401(a) and 7475, by having its own PSD regulations approved by EPA as part of its SIP, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

29. Where a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP under 40 C.F.R. § 52.21(a).

30. EPA approved New Jersey's and Alabama's (the "States") proposed PSD programs and incorporated by reference the PSD regulations of 40 C.F.R. § 52.21 into each State's SIP as set forth in the table below:

STATE	SIP CITATION – C.F.R.	STATE PSD REGULATION
New Jersey	40 C.F.R. § 52.1570 (Subpart FF)	N.J. Admin. Code § 7:27-8.11
Alabama	40 C.F.R. § 52.50 (Subpart B)	Ala. Admin. Code r. 335-3-14-.04

31. Pursuant to 40 C.F.R. § 52.21(i), an existing "major stationary source" that implements a "major modification" is required to obtain a PSD permit before commencing the modification, if the modification will cause a "significant net emissions increase" in the emissions of the source, as defined by the threshold amounts for specific pollutants set forth at 40 C.F.R. § 52.21(b)(23).

32. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), the PSD regulations at 40 C.F.R. § 52.21(j), and the corresponding state regulations also require a source with a major modification in an attainment or unclassifiable area to install and operate best available control technology ("BACT"), as defined at 40 C.F.R. § 52.21(b)(12), 42 U.S.C. § 7479(3), and in the corresponding state regulations, for each pollutant regulated under the CAA for which the modification would result in a significant net emissions increase.

33. "Major stationary source" is defined in pertinent part at 40 C.F.R. § 52.21(b)(1)(i), as a "stationary source" with the potential to emit pollutants subject to regulation in an amount equal or greater than 250 tons/year.

34. 40 C.F.R. § 52.21(b)(2)(i) defines a "major modification" as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation."

35. "Net emissions increase" means "the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and (b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i).

36. "Significant" means a rate of emissions that would equal or exceed any of the following rates for the following pollutants: 40 tons per year of volatile organic compounds ("VOC"); particulate matter ("PM"), 25 tons per year; and PM₁₀, 15 tons per year. 40 C.F.R. § 52.21(b)(23)(i).

37. 40 C.F.R. § 52.23 provides that the failure by a person to comply with any approved regulatory provision of a SIP, including any permit limitation or condition contained within an operating permit issued under a program that is incorporated into a SIP, shall render such person subject to enforcement action pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. The provisions of each State's SIP are federally enforceable pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. Section 113 of the CAA authorizes the Administrator to bring a civil action for injunctive relief and civil penalties against any person who owns or operates a major emitting facility or major stationary source and has violated an applicable SIP, at any time more than 30 days after the Administrator has notified that person of the violation.

38. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, the Administrator may commence a civil action for injunctive relief and civil penalties of not more than \$25,000 per day for each violation of the CAA, including violations of any applicable SIP, occurring before January 30, 1997; \$27,500 per

day for each violation occurring from January 30, 1997, through March 15, 2004; \$32,500 per day for each violation occurring from March 16, 2004, through January 11, 2010; and \$37,500 per day for each violation occurring after January 12, 2009.

Title V Permit Program

39. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources.” Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a permit program to be administered by any air pollution control agency, as found at 57 Fed. Reg. 32,250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70, and are referred to herein as the “Title V regulations.”

40. New Jersey’s and Alabama’s Title V programs were granted full and final approval by EPA, and the States’ Title V operating permit requirements codified in their Administrative Codes, as follows:

State	Effective Date	Title V Citation - Federal Regulation	State Title V Regulation
New Jersey	Dec. 5, 2001	66 Fed. Reg. 63,168	N.J. Admin. Code 7:27-22 <u>et seq.</u>
Alabama	Nov. 28, 2001	66 Fed. Reg. 54,444	Ala. Admin. Code rs. 335-3-1-.01 <u>et seq.</u>

41. Under Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. § 70.1(b), it is unlawful for any person to violate any requirement of a permit issued under Title V or to operate a “major source” except in compliance with a permit issued by permitting authority under Title V.

42. “Major source” is defined in Section 501 of the CAA, 42 U.S.C. § 7661(2), and in 40 C.F.R. § 70.2, as, among other things, any source that directly emits or has the potential to emit 100 tons or more per year of any regulated air pollutant.

43. Section 503 of the CAA, 42 U.S.C. § 7661b, and 40 C.F.R. § 70.5(a), require any owner or operator of a source subject to Title V permitting requirements to submit a timely and complete permit application. Among other things, this permit application must contain information sufficient to evaluate the subject source and its application, and to determine all applicable requirements (including any requirement to meet applicable control technology requirements) pursuant to PSD or non-attainment New Source Review (“NSR”); and to comply with a New Source Performance Standard (“NSPS”); certification of compliance with all applicable requirements; information that may be necessary to determine the applicability of other applicable requirements of the CAA; and a compliance plan for all applicable requirements for which the source is not in compliance, pursuant to 40 C.F.R. § 70.5(a).

44. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), and 40 C.F.R. § 70.6(a), require that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with “applicable requirements” of the CAA and the requirements of the relevant SIP.

45. The Title V regulations define “applicable requirements” at 40 C.F.R. § 70.2, as including any relevant PSD, non-attainment NSR, National Emission Standards for Hazardous Air Pollutants (“NESHAP”), and NSPS requirements.

46. The Title V regulations state at 40 C.F.R. § 70.5(b) that any applicant who fails to submit any relevant facts, or who has submitted incorrect information in a permit application,

shall promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submission.

47. Section 503(d) of the CAA, 42 U.S.C. § 7661b(d), provides that, if an applicant has submitted a timely and complete application for a Title V permit, but final action has not been taken on such application, the applicant's failure to have a permit shall not be a violation of Title V of the CAA, unless the delay in final action was due to the failure of the applicant to submit timely information required or requested to process the application. This provision is referred to as the "application shield."

Statutory Background (CWA)

48. The objective of the CWA, 33 U.S.C. §§ 1251 et seq., is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

49. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant" from a point source into navigable waters of the United States, except as authorized by the CWA and in compliance therewith.

50. Pursuant to Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), the Administrator of EPA may issue a National Pollutant Discharge Elimination System ("NPDES") permit, which authorizes the discharge of pollutants into navigable waters of the United States, upon the condition that such discharge meets all applicable requirements of the CWA. Section 402(a)(2) of the CWA, 33 U.S.C. § 1342(a)(2), directs the Administrator of EPA to prescribe conditions for NPDES permits to assure compliance with the requirements of the CWA, including conditions on data and information collection, reporting, and such other requirements as the Administrator deems appropriate.

51. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into navigable waters, and may include schedules of compliance. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the CWA, 33 U.S.C. § 1342(a). No NPDES permit may be issued when the imposition of conditions cannot ensure compliance with the applicable water quality standards of all affected States pursuant to 40 C.F.R. § 122.4(d).

52. A permittee shall at all times properly operate and maintain all facilities and systems of treatment and control that are installed or used by the permittee to achieve compliance with the conditions of the NPDES permit pursuant to 40 C.F.R. § 122.41(e).

53. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), each state may administer its own permit program if the program has been approved by the Administrator of EPA. The States of Alabama and New Jersey are authorized by the Administrator of EPA to administer the NPDES permit program for regulating the discharges of pollutants into navigable waters within each State's jurisdiction.

54. An individual NPDES permit can be obtained by submitting an application in accordance with the requirements of 40 C.F.R. § 122.21. A facility becomes authorized to discharge upon the effective date of the individually issued permit.

55. Pursuant to 40 C.F.R. § 122.46(a), NPDES permits are effective for a fixed term, which cannot exceed five years from the effective date of the permit. NPDES permits can be renewed by application in accordance with the requirements of 40 C.F.R. § 122.21.

56. Coverage under an expired permit will be continued if the permittee timely applies for renewal and the agency has not made a decision by the expiration date pursuant to 40 C.F.R. § 122.6(a). Renewal applications are due 180 days prior to expiration pursuant to 40 C.F.R. § 122.21(d).

57. The term “pollutant” is defined to include solid waste, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, industrial, and agricultural waste discharged into water pursuant to Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

58. The term “discharge” is defined to include the discharge of a pollutant or pollutants pursuant to CWA Section 502(16), 33 U.S.C. § 1362(16).

59. The term “discharge of a pollutant” includes the addition of any pollutant to navigable water from any point source pursuant to CWA Section 502(12), 33 U.S.C. § 1362(12).

60. The term “navigable waters” means the waters of the United States, including the territorial seas pursuant to CWA Section 502(7), 33 U.S.C. § 1362(7).

61. The term “point source” is defined to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, and concentrated animal feeding operation from which pollutants are or may be discharged pursuant to CWA Section 502(14), 33 U.S.C. § 1362(14).

62. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of the CWA, Section 301, 33 U.S.C. § 1311, or is in violation of any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

63. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, provides that any person who violates certain enumerated sections of the CWA, including Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation occurring before January 31, 1997; \$27,500 per day for each violation occurring from January 31, 1997, through March 15, 2004; \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2010; and \$37,500 per day for each violation occurring after January 12, 2009.

64. For purposes of this Complaint, the CWA claims are cited using the Code of Federal Regulations and the United States Code rather than the analogous delegated state statutory and regulatory provisions.

65. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under Section 402(a) of the CWA, 33 U.S.C. § 1342(a). Any such discharge is subject to such specific terms and conditions as are prescribed in the applicable permit.

66. Pursuant to the CWA, including Sections 308 and 402(p), 33 U.S.C. §§ 1318 and 1342(p), the Administrator of EPA promulgated regulations setting forth the permit application requirements for storm water discharges. 55 Fed. Reg. 48,063 (Nov. 16, 1990). These regulations are codified at 40 C.F.R. § 122.26.

67. On November 16, 1990, EPA published regulations under the NPDES program which defined the term “storm water discharge associated with industrial activity” to include storm water discharges from “any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” 40 C.F.R. § 122.26(b)(14).

68. Pursuant to 40 C.F.R. § 122.26(c), dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.

69. 40 C.F.R. § 122.26(b)(14)(vi) defines “storm water discharge associated with industrial activity,” in part, as including discharges at facilities that fall within Standard Industrial Classification (“SIC”) Code 3321 (gray and ductile iron foundries).

Oil Pollution Prevention

70. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321, provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

71. The regulations at 40 C.F.R. Part 112 set forth procedures, methods and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines. The regulated facilities include those that drill for, produce, gather, store, process, refine, transfer, distribute or consume oil or oil products.

72. For purposes of Section 311(b)(3) of the CWA, 42 U.S.C. § 1321(b)(3), EPA promulgated a regulation, set forth at 40 C.F.R. § 110.3, specifying what quantities of oil may be

harmful to the public health or welfare or the environment. Such quantities of oil include discharges that: (a) violate applicable water quality standards; (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or (c) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

73. "Oil" is defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2, to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

74. 40 C.F.R. § 110.3(b) defines "harmful quantity" for purposes of Section 311 of the CWA, 33 U.S.C. § 1321, to include discharges that "cause a film or sheen upon . . . the surface of the water or adjoining shorelines."

75. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines "discharge" to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under CWA Section 402, 33 U.S.C. § 1342.

76. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), "navigable water" is defined by 40 C.F.R. §§ 110.1 and 112.2 to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.

77. 40 C.F.R. § 112.3 requires the owner or operator of an onshore or offshore facility subject to this Section to prepare a Spill Prevention, Control and Countermeasure Plan ("SPCC") in accordance with 40 C.F.R. § 112.7 and any other applicable section of this part.

78. Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, provides that any person who fails to comply with any regulation issued under subsection (j) of this section shall be subject to a

civil penalty in an amount up to \$25,000 per day for each violation occurring before January 31, 1997; \$27,500 per day for each violation occurring from January 31, 1997, through March 15, 2004; \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

Statutory Background - Resource Conservation and Recovery Act ("RCRA")

79. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976, to amend the Solid Waste Disposal Act, and on the Hazardous and Solid Waste Amendments, enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a cradle-to-grave program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. See 42 U.S.C. § 6901 et seq.

80. RCRA's Subchapter III, RCRA Sections 3001-3023, 42 U.S.C. §§ 6921-6940, known as Subtitle C, required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, and dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260-279, comprise EPA's RCRA hazardous waste program.

81. RCRA Section 3006(b), 42 U.S.C. § 6926(b), allows the Administrator to authorize a state to administer its own hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program.

82. Pursuant to RCRA Section 3006(b), 42 U.S.C. § 6926(b), both Alabama and New Jersey have been granted final authorization by EPA to administer and enforce a hazardous waste program, as follows:

State	State Code	Date Authorized by EPA	Federal Register Citation
Alabama	Ala. Admin. Code r. 335-1-4, Hazardous Waste Program Regulations	Authorized Dec. 8, 1987	Effective Dec. 22, 1987 (52 Fed. Reg. 46,466)
New Jersey	N.J. Admin. Code 7:26G-1.1 <u>et seq.</u>	Authorized Feb. 7, 1985	Effective Feb. 21, 1985 (50 Fed. Reg. 5,260)

83. Pursuant to its authority under Subtitle C of RCRA, 42 U.S.C. § 6922(a), EPA has promulgated regulations applicable to solid and hazardous waste generators at 40 C.F.R. Parts 261 and 262, to owners/operators of hazardous waste facilities at 40 C.F.R. Parts 264 and 265, to land disposal of solid and hazardous waste at 40 C.F.R. Part 268, to disposal of universal waste at 40 C.F.R. Part 273, and to disposal of used oil at 40 C.F.R. Part 279.

84. EPA and the relevant regulations of Alabama and New Jersey require that generators of hazardous waste must, among other things:

- a. meet standards for generators of hazardous waste, 40 C.F.R. § 262.10;
- b. determine whether generated solid wastes are hazardous, 40 C.F.R. § 262.11;
- c. ensure that all off-site shipments of hazardous waste are transported to facilities possessing an EPA identification number, 40 C.F.R. § 262.12(c);
- d. prepare a hazardous waste manifest for each off-site shipment of hazardous waste, 40 C.F.R. § 262.20;
- e. certify as large or small quantity generators and waste management methods when initiating shipments of hazardous waste, 40 C.F.R. § 262.27;
- f. obtain either: (1) a RCRA permit or (2) interim status, pursuant to RCRA Section 3005, 40 U.S.C. § 6925, unless they accumulate waste for less than

90 days in a manner consistent with the requirements of 40 C.F.R. § 262.34(a);

- g. maintain for three years records of any test results, waste analyses, or other determinations made of any shipments of hazardous waste for treatment, storage, or disposal, 40 C.F.R. § 262.40(c);
- h. ensure proper use and management of containers storing hazardous waste, 40 C.F.R. § 264.173;
- i. ensure proper hazardous waste management during interim status, until final closure, or until post-closure responsibilities are fulfilled, 40 C.F.R. Part 65;
- j. ensure that facility personnel are properly trained in hazardous waste management, 40 C.F.R. § 265.16;
- k. ensure that arrangements with local authorities are made for emergency response, 40 C.F.R. § 265.37;
- l. ensure that a contingency plan is in place for emergency response, 40 C.F.R. § 265.52;
- m. ensure inspection of hazardous waste container storage areas, 40 C.F.R. § 265.174;
- n. treat, store, and dispose of hazardous waste in compliance with a permit or (if they qualify for interim status) with interim status requirements, 40 C.F.R. § 265.1;
- o. meet certain requirements for waste treatment prior to placement or disposal of hazardous waste on land, 40 C.F.R. § 268;

- p. ensure that small quantity handlers properly label or mark universal waste, 40 C.F.R. § 273.14;
- q. ensure training for small quantity handlers of universal waste, 40 C.F.R. § 273.16;
- r. ensure training for large quantity handlers of universal waste, 40 C.F.R. § 273.36;
- s. ensure proper management of used oil, 40 C.F.R. § 279.10;
- t. ensure proper management of mixtures of used oil and hazardous waste, 40 C.F.R. § 279.21; and
- u. ensure proper storage of used oil, 40 C.F.R. § 279.22.

85. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), the United States may enforce the federally-approved state hazardous waste programs, as well as the federal regulations that remain effective in the above-listed States, by filing an action seeking civil penalties not to exceed \$25,000 per day for each violation.

86. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, permits the Administrator to bring an action to seek penalties of not more than \$27,500 per day for each violation occurring from January 31, 1997, through March 15, 2004; \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

**Statutory and Regulatory Background - Emergency Planning and
Community Right-To-Know Act ("EPCRA")**

87. Sections 301 to 303 of EPCRA, 42 U.S.C. §§ 11001 to 11003, impose and mandate notification requirements on industrial and commercial facilities and require the creation of state emergency response commissions ("SERCs") and local emergency planning committees ("LEPCs").

88. EPCRA establishes a framework of state, regional, and local agencies designed to inform the public about the presence of hazardous and toxic chemicals, and to provide for emergency response in the event of a health-threatening release. The LEPCs are charged with developing emergency response plans based on the information provided by facilities.

89. A "facility" is defined at Section 329 of EPCRA, 42 U.S.C. § 11049, as:
"all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person. . ."

90. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility (which is required under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical) to prepare and submit to the SERC, the LEPC and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370).

91. Instructions for preparing the Tier II emergency and hazardous chemical inventory form are provided at 40 C.F.R. § 370.42. The instructions require, among other things, that the chemical abstract service registry number ("CAS") be entered on the form.

92. EPCRA requires the owner or operator of a facility subject to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), to submit annually, no later than July 1 of each year, a toxic chemical release inventory reporting form ("Form R") for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding established chemical thresholds.

93. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22, provide that a covered facility is one that has 10 or more full-time employees, that is in SIC codes 20 through 39 (as in effect on July 1, 1985), and that manufactured, processed, or otherwise used a toxic chemical listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), in excess of the threshold quantity of that toxic chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during a calendar year.

94. Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder, require McWane to calculate and report annually to EPA various data regarding toxic chemicals at its respective facilities during the preceding year. Such data must include the "annual quantity of the toxic chemical entering each environmental medium."

95. 40 C.F.R. § 372.22 sets forth the threshold reporting amounts for filing the Form R report, which equal 25,000 lbs per year for chemical "manufactured or processed" by a facility and 10,000 lbs per year for chemicals "otherwise used."

96. 40 C.F.R. § 372.3 defines the term "manufacture" to mean, to produce, prepare, import or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use, or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or

mixture of chemicals as a byproduct, and a toxic chemical that remains in that chemical or mixture of chemicals as an impurity.

97. Pursuant to 40 C.F.R. § 372.3, “otherwise used” is defined as “any use of a toxic chemical that is not covered by the terms manufacture or process and includes use of a toxic chemical contained in a mixture or trade name product.”

98. Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, authorizes the Administrator to bring a judicial action to assess a penalty of not more than \$27,500 per day for the first violation and \$82,500 per day for each subsequent violation for violations occurring from January 31, 1997, through March 15, 2004; \$32,500 per day for the first violation and \$97,500 per day for each subsequent violation occurring from March 16, 2004, through January 12, 2009; and \$37,500 per day for the first violation and \$107,500 per day for each subsequent violation occurring from January 13, 2009, through December 6, 2013.

Statutory Background - Toxic Substances Control Act (TSCA)

99. The Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 to 2692, and the regulations promulgated thereunder establish a statutory and regulatory scheme designed to protect public health and the environment, which is exposed to a large number of chemical substances and mixtures.

100. Polychlorinated biphenyls (“PCBs”) are toxic chemicals that are extremely stable and persistent in the environment. PCBs have been demonstrated to cause cancer, suppression of the immune system, liver damage, birth defects, impairment of reproductive capacity and other illnesses and injuries in laboratory animals. PCBs are also toxic to aquatic organisms, causing

death, reduced growth, and impairment of reproductive capacity and other biological functions. PCBs are also toxic to humans, causing liver damage, adverse skin effects, and changes in other biological functions. PCBs are suspected of causing cancer in humans. PCBs bioaccumulate in humans and other organisms, which means that PCBs accumulate over time in living tissues in concentrations much higher than the concentrations to which the organisms are exposed in the environment. 47 Fed. Reg. 37,344-45 (Aug. 25, 1982).

101. Section 6(e) of TSCA, 15 U.S.C. § 2605(e), generally bans the manufacture, processing, distribution in commerce, use or disposal of PCBs unless authorized by EPA, or unless done in accordance with EPA rules, set forth at 40 C.F.R. Part 761. Sections 15(1) and 409 of TSCA, 15 U.S.C. §§ 2614(1) and 2689, make it unlawful for any person to fail or refuse to comply with Section 6(e) of TSCA, 15 U.S.C. § 2605(e), or any rule promulgated thereunder.

102. Section 6(e)(2)(A) of TSCA, 15 U.S.C. § 2605(e)(2)(A), provides, inter alia, that no person may distribute in commerce or use any PCB in any manner other than in a totally enclosed manner after December 31, 1977, unless such activity has been authorized by rule by the Administrator of EPA pursuant to 15 U.S.C. § 2605(e)(2)(B). "Totally enclosed manner" means any manner that will ensure no exposure of humans or the environment to any concentration of PCBs. 40 C.F.R. § 761.30.

103. Regulations at 40 C.F.R. § 761, Subpart C, address the marking and labeling of PCB items such as transformers and other forms of electrical equipment. These regulations prescribe standard formats for PCB labels, including size, color, and content.

104. EPA's regulations also prescribe requirements for the storage and disposal of waste PCBs and PCB items. 40 C.F.R. § 761.65. All storage facilities must satisfy technical

standards designed to prevent the release of PCBs, and when PCB items are removed from service, they must be disposed of within one year.

105. Regulations at 40 C.F.R. § 761, Subpart K, require all waste PCBs to be tracked from their generation to their ultimate disposal through a manifest system. Those who generate, store, transport or dispose of waste PCBs must obtain an identification number, which is included on a written manifest when wastes are shipped off-site for disposal. When the designated disposal facility receives the waste, it must sign the manifest and return it to the generator.

106. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, McWane is liable for civil penalties of not more than \$25,000 per day for each violation of TSCA occurring before January 31, 1997, \$27,500 per day for each violation occurring from January 31, 1997, through March 15, 2004, and not more than \$32,500 per day for each violation of TSCA occurring from March 16, 2004, through January 12, 2009.

FIRST CLAIM FOR RELIEF – CAA
(Failure to Have and Submit Air Pollution Episode Plan, McWane Cast Iron Pipe)

107. Paragraphs 1 through 106 are realleged and incorporated herein.

108. Based on an audit conducted by McWane, during the period of January 29, 2001, through September 30, 2005, Defendant failed to have an Air Pollution Episode Plan at the Alabama Facility for PM emission reductions to be taken during declared PM episodes, as required by permits issued to the Facility by Jefferson County Department of Health (“JCDH”) pursuant to the CAA, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-2-.02.

109. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004, and \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

SECOND CLAIM FOR RELIEF – CAA
(Failure to Maintain Complete and Accurate Records, McWane Cast Iron Pipe)

110. Paragraphs 1 through 106 are realleged and incorporated herein.

111. Based on an audit conducted by McWane, Defendant failed to maintain records at the Alabama Facility regarding the occurrence and duration of startups, shutdowns or malfunctions in the operation of process equipment and air pollution control equipment, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.04. The CAA permits for the Alabama Facility required records to be maintained for at least two years following the date of each occurrence.

112. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004.

THIRD CLAIM FOR RELIEF – CAA
(Failure to Report Excess Emissions, McWane Cast Iron Pipe)

113. Paragraphs 1 through 106 are realleged and incorporated herein.

114. Based on an audit conducted by McWane, Defendant failed to report excess emissions resulting from the maintenance or malfunction of plant equipment at the Alabama Facility, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.07.

115. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004.

FOURTH CLAIM FOR RELIEF – CAA
(Failure to Notify State Agency of Planned Shutdowns, McWane Cast Iron Pipe Company)

116. Paragraphs 1 through 106 are realleged and incorporated herein.

117. Based on an audit conducted by McWane, Defendant failed to comply fully at the Alabama Facility with notification requirements of its CAA permits that required Defendant to notify the JCDH at least 24 hours in advance of a planned shutdown of air pollution control equipment for scheduled maintenance and for breakdowns of air pollution control or process equipment that result in increased emissions for a period greater than 30 minutes, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.07.

118. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004.

FIFTH CLAIM FOR RELIEF – CAA
(Failure to Submit Quarterly Reports, McWane Cast Iron Pipe)

119. Paragraphs 1 through 106 are realleged and incorporated herein.

120. Based on an audit conducted by McWane, at the Alabama Facility Defendant failed to submit quarterly summary reports on daily coating and solvent usage/solvent density, percent of solvent by weight, and operating hours of the pipe coating stations no later than 15 days after the reported calendar quarter, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.04(2), for the period from January 29, 2001, through July 31, 2002.

121. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004.

SIXTH CLAIM FOR RELIEF – CAA
(Failure to Conduct Initial Compliance Demonstration, McWane Cast Iron Pipe)

122. Paragraphs 1 through 106 are realleged and incorporated herein.

123. Based on an audit conducted by McWane, Defendant failed to conduct an initial compliance demonstration at the Alabama Facility of the VOC surface coating emission limit of 3.5 lbs/gal, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and JCDH Rule 8.11.11(e)(3).

124. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004.

SEVENTH CLAIM FOR RELIEF – CAA
(Failure to Provide Documentation of Air Emission Estimates, McWane Cast Iron Pipe)

125. Paragraphs 1 through 106 are realleged and incorporated herein.

126. Based on an audit conducted by McWane, Defendant failed to have a technical support document available at the Alabama Facility. As a result, the audit team was unable to confirm that the Operation Air Permit Report was accurate with respect to air emission estimates, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.04.

127. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004.

EIGHTH CLAIM FOR RELIEF – CAA
(Failure to Conduct Complete Testing in Title V Permit, McWane Cast Iron Pipe)

128. Paragraphs 1 through 106 are realleged and incorporated herein.

129. Based on an audit conducted by McWane, Defendant failed to include, in a stack testing report for the Alabama Facility submitted on November 25, 2002, data for benzene and condensable particulate matter (“PM”), two of eleven pollutants for which testing results were required, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.04, and continued to fail to provide such data during the period from November 25, 2002, through December 21, 2004.

130. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004, and \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

NINTH CLAIM FOR RELIEF – CAA
(Submission of Incomplete Title V Permit Report, McWane Cast Iron Pipe)

131. Paragraphs 1 through 106 are realleged and incorporated herein.

132. Based on an audit conducted by McWane, Defendant submitted a report for the Alabama Facility under its Title V permit that was incomplete, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.04. McWane failed to submit the required information during the period from May 18, 2004, through December 21, 2004.

133. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

TENTH CLAIM FOR RELIEF – CAA
(Failure to Maintain Complete Records Required
by Title V Permit, McWane Cast Iron Pipe)

134. Paragraphs 1 through 106 are realleged and incorporated herein.

135. Based on an audit conducted by McWane, Defendant failed to keep current and complete Potential to Emit (“PTE”) emission inventory records for the Alabama Facility, as required by its Title V Permit, by not including fugitive emissions from: (1) roadways and parking lots; (2) welding operations; (3) storage piles; (4) sand and cement bins; (5) grinding and machining; and (6) degreasing, in violation of CAA Section 504, 42 U.S.C. § 7661c, 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.04, for the period from May 18, 2004, through September 15, 2004.

136. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

ELEVENTH CLAIM FOR RELIEF – CAA
(Failure to Maintain Complete Records, McWane Cast Iron Pipe)

137. Paragraphs 1 through 106 are realleged and incorporated herein.

138. Based on an audit conducted by McWane, Defendant failed to keep complete records identifying emissions units and actual, potential, and allowable emissions at the Alabama Facility, in violation of the Facility’s Title V permit, CAA Section 502, 42 U.S.C. § 7661a(a); 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.04, for the period of May 18, 2004, through December 28, 2004.

139. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for violation of the CAA occurring from March 16, 2004, through January 12, 2009.

TWELFTH CLAIM FOR RELIEF – CAA
(Failure to Obtain Construction Permit, McWane Cast Iron Pipe)

140. Paragraphs 1 through 106 are realleged and incorporated herein.

141. Based on an audit conducted by McWane, Defendant failed to obtain a construction permit for oven modifications at the Alabama Facility, in violation of CAA Section 165, 42 U.S.C. § 7475; 40 C.F.R. §§ 70.5 and 70.7; and Ala. Admin. Code r. 335-3-14-.04, for the period of May 18, 2004, through February 28, 2006.

142. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

THIRTEENTH CLAIM FOR RELIEF – CAA
(Failure to Obtain Construction Permit, McWane Cast Iron Pipe)

143. Paragraphs 1 through 106 are realleged and incorporated herein.

144. Based on an audit conducted by McWane, Defendant failed to obtain a construction permit for cupola modifications at the Alabama Facility, in violation of CAA Section 165, 42 U.S.C. § 7475; 40 C.F.R. §§ 70.5 and 70.7; and Ala. Admin. Code r. 335-3-14-.04, for the period of May 18, 2004, through February 28, 2006.

145. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

FOURTEENTH CLAIM FOR RELIEF – CAA
(Failure to Obtain Construction Permit, McWane Cast Iron Pipe)

146. Paragraphs 1 through 106 are realleged and incorporated herein.

147. Based on an audit conducted by McWane, Defendant failed to obtain a construction permit for replacement of a cement line at the Alabama Facility, in violation of

CAA Section 165, 42 U.S.C. § 7475; 40 C.F.R. §§ 70.5 and 70.7; and Ala. Admin. Code r. 335-3-14-.04, for the period from May 18, 2004, through February 28, 2006.

148. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

FIFTEENTH CLAIM FOR RELIEF – CAA
(Failure to Maintain Records, McWane Cast Iron Pipe)

149. Paragraphs 1 through 106 are realleged and incorporated herein.

150. Based on an audit conducted by McWane, for the period from May 18, 2004, through September 8, 2004, Defendant failed to adequately monitor compliance with all applicable limits at the Alabama Facility, including those not listed in permit, by failing to maintain records, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(a)(3); and Ala. Admin. Code r. 335-3-1-.04.

151. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

SIXTEENTH CLAIM FOR RELIEF – CAA
(Failure to Submit VOC Reports Timely, McWane Cast Iron Pipe)

152. Paragraphs 1 through 106 are realleged and incorporated herein.

153. Based on an audit conducted by McWane, Defendant failed at the Alabama Facility to submit timely semi-annual reports for VOC/NO_x and quarterly reports for VOCs within 15 days after the end of the applicable quarter as required, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. §§ 70.6(a)(3), 75 and Ala. Admin. Code r. 335-3-1-.04, for the period of May 18, 2004, through September 15, 2004.

154. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

SEVENTEENTH CLAIM FOR RELIEF – CAA
(Failure to Maintain Complete Records, McWane Cast Iron Pipe)

155. Paragraphs 1 through 106 are realleged and incorporated herein.

156. Based on an audit conducted by McWane, Defendant failed to comply fully with all recordkeeping requirements at the Alabama Facility established by its air permits or applicable regulations, in that: (1) records documenting VOC calculations were not maintained; (2) one emissions report did not differentiate low NO_x burners for emissions unit 010; and (3) records regarding differential pressure readings for the ductile line and the cupola were not complete, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. §§ 70.6(a)(3) and 75; and Ala. Admin. Code r. 335-3-1.04, for the period of May 18, 2004, through September 15, 2004.

157. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

EIGHTEENTH CLAIM FOR RELIEF – CAA
(Failure to Comply with Reporting Requirements of Permit)

158. Paragraphs 1 through 106 are realleged and incorporated herein.

159. Based on an audit conducted by McWane, Defendant failed to submit reports regarding a differential pressure range limit for the ductile line and cupola at the Alabama Facility, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.04, for the period of May 18, 2004, through June 8, 2005.

160. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

NINETEENTH CLAIM FOR RELIEF – CAA
(Failure to Install Required Equipment, McWane Cast Iron Pipe)

161. Paragraphs 1 through 106 are realleged and incorporated herein.

162. Based on an audit conducted by McWane, during the period of May 18, 2004, through August 19, 2004, Defendant failed to install the required manometer on the ductile baghouse at ground level and on a computer monitoring screen at the Alabama Facility, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and Ala. Admin. Code r. 335-3-1-.04.

163. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

TWENTIETH CLAIM FOR RELIEF – CAA
(Failure to Submit Complete Records, McWane Cast Iron Pipe)

164. Paragraphs 1 through 106 are realleged and incorporated herein.

165. Based on an audit conducted by McWane, Defendant submitted its annual CAA compliance certification for the Alabama Facility with the following deficiencies: (1) failure to address compliance with general conditions in the permit; and (2) incorrect reporting of continual compliance with all parameters, in violation of CAA Sections 502 and 503, 42 U.S.C. §§ 7661a and 7661b; 40 C.F.R. § 70.5(a); and Ala. Admin. Code r. 335-3-1-.04, for the period of May 18, 2004, through September 15, 2004.

166. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

TWENTY-FIRST CLAIM FOR RELIEF – CAA
(Failure to Meet Permit Emission Limits, McWane Ductile - New Jersey)

167. Paragraphs 1 through 106 are realleged and incorporated herein.

168. Based on an audit conducted by McWane, Defendant failed to meet permit limits for cupola scrubber stack emissions for carbon monoxide (CO) and mercury at the New Jersey Facility in a test conducted in February of 2000, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and N.J. Admin. Code § 7:27-8.2.

169. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004.

TWENTY-SECOND CLAIM FOR RELIEF – CAA
(Failure to Meet Permit Emission Limits, McWane Ductile - New Jersey)

170. Paragraphs 1 through 106 are realleged and incorporated herein.

171. Based on an audit conducted by McWane, Defendant failed to meet permit limits for the Melt Center Emission Control Stack for chromium, lead, nickel and total particulate matter at the New Jersey Facility in a test conducted in January of 2000, in violation of CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and N.J. Admin. Code § 7:27-8.2.

172. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004.

TWENTY-THIRD CLAIM FOR RELIEF – CAA
(Failure to Maintain Complete Records, McWane Ductile - New Jersey)

173. Paragraphs 1 through 106 are realleged and incorporated herein.

174. Based on an audit conducted by McWane, Defendant failed to maintain complete records at the New Jersey Facility for certain materials charged to the cupola, including non-hazardous used oil and waste paint pallets, in violation of the facility's Title V permit, CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6(b); and N.J. Admin. Code § 7:27-22.3(e).

175. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004.

TWENTY-FOURTH CLAIM FOR RELIEF – CAA
(Failure to Obtain Operating Permit, McWane Ductile - New Jersey)

176. Paragraphs 1 through 106 are realleged and incorporated herein.

177. Based on an audit conducted by McWane, Defendant operated its air paint dryer and core machine at the New Jersey Facility from March 31, 2004, until October 12, 2004, prior to any permits being issued, in violation of CAA Section 503, 42 U.S.C. § 7661b; 40 C.F.R. §§ 70.5(a) and 70.7; and N.J. Admin. Code § 7:27-8.2.

178. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

TWENTY-FIFTH CLAIM FOR RELIEF – CAA
(Failure to Accurately Calculate Air Emission Rates, McWane Ductile - New Jersey)

179. Paragraphs 1 through 106 are realleged and incorporated herein.

180. Based on an audit conducted by McWane, Defendant submitted a Title V permit application for the New Jersey Facility that contained inaccurate NOx emission rates for its

annealing furnace, in violation of CAA Section 503, 42 U.S.C. § 7661b; 40 C.F.R. § 70.6(b); and N.J. Admin. Code § 7:27-22.6.

181. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CAA occurring from January 31, 1997, through March 15, 2004, and \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

TWENTY-SIXTH CLAIM FOR RELIEF – CAA
(Failure to Maintain Complete Records, McWane Ductile - New Jersey)

182. Paragraphs 1 through 106 are realleged and incorporated herein.

183. Based on an audit conducted by McWane, Defendant failed to maintain adequate documentation supporting the New Jersey Facility's determination that it was not a major source of Hazardous Air Pollutants ("HAPs"), in violation of its Title V permit, CAA Section 502, 42 U.S.C. § 7661a; 40 C.F.R. § 70.6; and N.J. Admin. Code § 7:27-22.3(e), for the period June 29, 2004, through October 21, 2004.

184. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CAA occurring from March 16, 2004, through January 12, 2009.

TWENTY-SEVENTH CLAIM FOR RELIEF – EPCRA
(Failure to File Accurate Form R Report, McWane Cast Iron Pipe)

185. Paragraphs 1 through 106 are realleged and incorporated herein.

186. Based on an audit conducted by McWane, Defendant submitted a Form R for the Alabama Facility with data quality errors that caused erroneous data for nickel to be submitted for calendar year 1999, in violation of EPCRA Section 311, 42 U.S.C. § 11021 and 40 C.F.R. §§ 372.22 and 372.30(a).

187. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), McWane is liable for civil penalties of not more than \$27,500 per day for the first violation of EPCRA and \$82,500 per day for each subsequent violation occurring from January 31, 1997, through March 15, 2004.

TWENTY-EIGHTH CLAIM FOR RELIEF – EPCRA
(Failure to File Accurate Form R Report, McWane Cast Iron Pipe)

188. Paragraphs 1 through 106 are realleged and incorporated herein.

189. Based on an audit conducted by McWane, Defendant submitted a Form R for the Alabama Facility with data quality errors that caused erroneous data for chromium to be submitted for calendar year 1999, in violation of EPCRA Section 311, 42 U.S.C. § 11021 and 40 C.F.R. §§ 372.22 and 372.30(a).

190. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), McWane is liable for civil penalties of not more than \$27,500 per day for the first violation of EPCRA and \$82,500 per day for each subsequent violation of EPCRA occurring from January 31, 1997, through March 15, 2004.

TWENTY-NINTH CLAIM FOR RELIEF – EPCRA
(Failure to File Accurate Form R Report, McWane Cast Iron Pipe)

191. Paragraphs 1 through 106 are realleged and incorporated herein.

192. Based on an audit conducted by McWane, Defendant submitted a Form R for the Alabama Facility with data quality errors that caused erroneous data for xylene to be submitted for calendar year 1999, in violation of EPCRA Section 311, 42 U.S.C. § 11021 and 40 C.F.R. §§ 372.22 and 372.30(a).

193. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), McWane is liable for civil penalties of not more than \$27,500 per day for the first violation and \$82,500 per

day for each subsequent violation of EPCRA occurring from January 31, 1997, through March 15, 2004.

THIRTIETH CLAIM FOR RELIEF – EPCRA
(Failure to File Accurate Form R Report, McWane Cast Iron Pipe)

194. Paragraphs 1 through 106 are realleged and incorporated herein.

195. Based on an audit conducted by McWane, Defendant submitted a Form R for the Alabama Facility with data quality errors that caused erroneous data for toluene to be submitted for calendar year 1999, in violation of EPCRA Section 311, 42 U.S.C. § 11021 and 40 C.F.R. §§ 372.22 and 372.30(a).

196. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), McWane is liable for civil penalties of not more than \$27,500 per day for the first violation and \$82,500 per day for each subsequent violation of EPCRA occurring from January 31, 1997, through March 15, 2004.

THIRTY-FIRST CLAIM FOR RELIEF – EPCRA
(Failure to File Accurate Form R Report, McWane Cast Iron Pipe)

197. Paragraphs 1 through 106 are realleged and incorporated herein.

198. Based on an audit conducted by McWane, Defendant submitted a Form R for the Alabama Facility with data quality errors that caused erroneous data for barium to be submitted for calendar year 1999, in violation of EPCRA Section 311, 42 U.S.C. § 11021 and 40 C.F.R. §§ 372.22 and 372.30(a).

199. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), McWane is liable for civil penalties of not more than \$27,500 per day for the first violation and \$82,500 per day for each subsequent violation of EPCRA occurring from January 31, 1997, through March 15, 2004.

THIRTY-SECOND CLAIM FOR RELIEF – EPCRA
(Failure to Maintain Complete and Accurate Records, McWane Cast Iron Pipe)

200. Paragraphs 1 through 106 are realleged and incorporated herein.

201. Based on an audit conducted by McWane, Defendant failed to maintain complete and accurate records at the Alabama Facility to ensure compliance with EPCRA requirements under EPCRA Sections 312 and 313, 42 U.S.C. §§ 11022 and 11023, including: (1) the plant was unable to produce three material safety data sheets (“MSDS”) requested by the auditors; (2) the plant personnel could not answer questions regarding whether or not a specific material had been used or, if used, how and where it was used in the plant; (3) there were no records to show the quantity of each material used during each calendar year; and (4) the estimate of VOC-containing materials had been based on a deficient material balance analysis, in violation of EPCRA Section 311, 42 U.S.C. § 11021 and 40 C.F.R. §§ 370.42, 372.22 and 372.30(a), for the period of January 29, 2001, through November 2, 2002.

202. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), McWane is liable for civil penalties of not more than \$27,500 per day for the first violation and \$82,500 per day for each subsequent violation of EPCRA occurring from January 31, 1997, through March 15, 2004.

THIRTY-THIRD CLAIM FOR RELIEF – EPCRA
(Failure to Maintain Initial EPCRA Filing Record, McWane Cast Iron Pipe)

203. Paragraphs 1 through 106 are realleged and incorporated herein.

204. Based on an audit conducted by McWane, Defendant failed to keep a copy at the Alabama Facility of its initial EPCRA Section 311 filing in violation of EPCRA Section 311, 42 U.S.C. § 11021 and 40 C.F.R. § 370.20. No record of such a filing was found at the Facility, nor

any information to determine whether such a filing was ever made for the period from January 29, 2001, through November 2, 2002.

205. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), McWane is liable for civil penalties of not more than \$27,500 per day for the first violation and \$82,500 per day for each subsequent violation of EPCRA occurring from January 31, 1997, through March 15, 2004.

THIRTY-FOURTH CLAIM FOR RELIEF – EPCRA
(Failure to Maintain Accurate Records, McWane Cast Iron Pipe)

206. Paragraphs 1 through 106 are realleged and incorporated herein.

207. Based on an audit conducted by McWane, Defendant failed to have complete records regarding employee training on emergency release reporting procedures available on-site at the Alabama Facility, in violation of EPCRA Section 303, 42 U.S.C. § 11003, for the period of May 18, 2004, through December 28, 2004.

208. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), McWane is liable for civil penalties of not more than \$32,500 per day for the first violation and \$97,500 per day for each violation of EPCRA occurring from March 16, 2004, through January 12, 2009.

THIRTY-FIFTH CLAIM FOR RELIEF – EPCRA
(Failure to Maintain Complete Records, McWane Ductile - New Jersey)

209. Paragraphs 1 through 106 are realleged and incorporated herein.

210. Based on an audit conducted by McWane, Defendant failed to maintain complete records at the New Jersey Facility to provide the basis for its EPCRA Toxic Release Inventory reporting, including causing an inaccurate Form R for barium to be submitted, in violation of EPCRA Sections 311 and 312, 42 U.S.C. §§ 11021 and 11022, 40 C.F.R. §§ 372.22 and 372.30(a).

211. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), McWane is liable for civil penalties of not more than \$27,500 per day for the first violation and \$82,500 per day for each subsequent violation of EPCRA occurring from January 31, 1997, through March 15, 2004.

THIRTY-SIXTH CLAIM FOR RELIEF – EPCRA
(Failure to Submit Form R Report, McWane Ductile - New Jersey)

212. Paragraphs 1 through 106 are realleged and incorporated herein.

213. Based on an audit conducted by McWane, Defendant failed to submit a Form R for xylene for reporting year 1999 at the New Jersey Facility, in violation of EPCRA Section 311, 42 U.S.C. § 11021, 40 C.F.R. §§ 372.10(a), 372.22 and 372.30(a).

214. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), Defendant McWane is liable for civil penalties of not more than \$27,500 per day for the first violation and \$82,500 per day for each violation of EPCRA occurring from January 31, 1997, through March 15, 2004.

THIRTY-SEVENTH CLAIM FOR RELIEF – CWA
(Failure to Implement SPCC Plan, McWane Cast Iron Pipe)

215. Paragraphs 1 through 106 are realleged and incorporated herein.

216. Based on an audit conducted by McWane, for the period of January 29, 2001, through June 1, 2001, Defendant implemented an SPCC Plan at the Alabama Facility that contained some discrepancies, in violation of CWA Section 311, 33 U.S.C. § 1321 and 40 C.F.R. § 112.3.

217. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of any

regulation issued under subsection (j) of this section occurring from January 31, 1997, through March 15, 2004.

THIRTY-EIGHTH CLAIM FOR RELIEF – CWA
(Unpermitted Discharge to Avondale Creek, McWane Cast Iron Pipe)

218. Paragraphs 1 through 106 are realleged and incorporated herein.

219. Based on an audit conducted by McWane, Defendant failed to prevent a leak of diesel fuel from the Alabama Facility's diesel fuel dispensing station that migrated into the groundwater and into Avondale Creek in violation of CWA Section 311, 33 U.S.C. § 1321 and 40 C.F.R. § 112.3. Avondale Creek flows into the Black Warrior River, a navigable water of the United States. The oily sheen was discovered and reported to ADEM on September 11, 2000.

220. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CWA occurring from January 31, 1997, through March 15, 2004.

THIRTY-NINTH CLAIM FOR RELIEF – CWA
(Failure to Comply with Storm Water Pollution Prevention Plan BMP)
(McWane Cast Iron Pipe)

221. Paragraphs 1 through 106 are realleged and incorporated herein.

222. Based on an audit conducted by McWane, Defendant failed to comply with a best management practice ("BMP") at the Alabama Facility, which led to leaks from the Creek Clarifier that resulted in an unpermitted release of water likely to flow into a storm drain, in violation of a NPDES permit issued under CWA Section 402, 33 U.S.C. § 1342; Ala. Admin. Code r. 335-6-6-.08(j) and 335-6-6-.12(a); and 40 C.F.R. § 122.26, for the period of May 18, 2004, through October 20, 2004. Additionally, sludge from the Creek Clarifier was observed on the ground around the hopper during the audit, as well as oily residue on the ground and vegetation along the back of the Creek Clarifier.

223. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CWA occurring from March 16, 2004, through January 12, 2009.

FORTIETH CLAIM FOR RELIEF – CWA
(Failure to Submit Complete DMR Reports, McWane Cast Iron Pipe)

224. Paragraphs 1 through 106 are realleged and incorporated herein.

225. Based on an audit conducted by McWane, Defendant failed to submit complete discharge monitoring reports (“DMRs”) relating to the Alabama Facility for the month of January, 2004, by providing incomplete data on certain parameters in process water discharges for Outfall 001, for the period from May 18, 2004, through October 1, 2004, in violation of a NPDES permit issued under CWA Section 402, 33 U.S.C. § 1342; Ala. Admin. Code r. 335-6-6-.12(j); and 40 C.F.R §122.41(j).

226. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CWA occurring from March 16, 2004, through January 12, 2009.

FORTY-FIRST CLAIM FOR RELIEF – CWA
(Failure to Report Unauthorized Discharges and to Comply with Permit)
(McWane Cast Iron Pipe)

227. Paragraphs 1 through 106 are realleged and incorporated herein.

228. Based on an audit conducted by McWane, Defendant failed to comply with both process water and storm water discharge permit regulations at the Alabama Facility by failing to report exceedances of effluent limitations, in violation of a NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342; Ala. Admin. Code r. 335-6-6-.12(l); and 40 C.F.R. § 122.41(l), during the period of 2001 through 2004. McWane also failed to report three effluent

limit exceedances at the Alabama Facility, in violation of reporting requirements of the State Indirect Discharge Industrial User Permit(s) and Ala. Admin. Code r. 335-6-6.

229. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CWA occurring from January 31, 1997, through March 15, 2004, and \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

FORTY-SECOND CLAIM FOR RELIEF – CWA
(Failure to Comply with NPDES Permit, McWane Cast Iron Pipe)

230. Paragraphs 1 through 106 are realleged and incorporated herein.

231. Based on an audit conducted by McWane, for the period of May 18, 2004, through November 12, 2004, Defendant failed to meet the Alabama Facility's NPDES permitting requirement that required the Facility to have a Solvent Management Plan in place, in violation of a NPDES permit issued under CWA Section 402, 33 U.S.C. § 1342; Ala.M Admin. Code r. 335-6-6-.12(a); and 40 C.F.R. § 122.41(a).

232. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CWA occurring from March 16, 2004, through January 12, 2009.

FORTY-THIRD CLAIM FOR RELIEF – CWA
(Failure to Maintain Records, McWane Cast Iron Pipe)

233. Paragraphs 1 through 106 are realleged and incorporated herein.

234. Based on an audit conducted by McWane, Defendant failed to maintain records of annual BMP compliance reviews at the Alabama Facility and the daily inspection logs lacked the required signature, for the period of May 18, 2004, through October 8, 2004, in violation of a

permit issued under CWA Section 402, 33 U.S.C. § 1342; Ala.M Admin. Code r. 335-6-6-.08(j) and 335-6-6-.12(j); and 40 C.F.R. § 122.26.

235. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CWA occurring from March 16, 2004, through January 12, 2009.

FORTY-FOURTH CLAIM FOR RELIEF – CWA
(Failure to Comply with SWPPP Required by NPDES Storm Water Permit)
(McWane Cast Iron Pipe)

236. Paragraphs 1 through 106 are realleged and incorporated herein.

237. Based on an audit conducted by McWane, for the period of May 18, 2004, through September 8, 2004, Defendant failed to comply with Storm Water Pollution Prevention Plan (“SWPPP”) requirements at the Alabama Facility by allowing solids to accumulate in areas difficult to clean, in violation of the SWPPP contained in a permit issued under CWA Section 402, 33 U.S.C. § 1342; Ala. Admin. Code r. 335-6-6-.12; and 40 C.F.R. § 122.41.

238. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant is liable for civil penalties of not more than \$32,500 per day for each violation of the CWA occurring from March 16, 2004, through January 12, 2009.

FORTY-FIFTH CLAIM FOR RELIEF – CWA
(Failure to Comply with SWPPP and Implement BMP, McWane Cast Iron Pipe)

239. Paragraphs 1 through 106 are realleged and incorporated herein.

240. Based on an audit conducted by McWane, for the period from May 18, 2004, through October 28, 2004, Defendant failed to implement an appropriate BMP at the Alabama Facility. Specifically, the water/glycol system on the 20 foot line had significant leakage, which could contribute to exceedances of permit effluent limitations, in violation of a permit issued

under CWA Section 402, 33 U.S.C. § 1342; Ala. Admin. Code r. 335-6-6-.08(j) and 335-6-6-.12(a); and 40 C.F.R. § 122.41.

241. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CWA occurring from March 16, 2004, through January 12, 2009.

FORTY-SIXTH CLAIM FOR RELIEF – CWA
(Failure to Comply with SPCC Regulations, McWane Cast Iron Pipe)

242. Paragraphs 1 through 106 are realleged and incorporated herein.

243. Based on an audit conducted by McWane, for the period of May 18, 2004, through March 1, 2005, Defendant failed to have an SPCC Plan in place at the Alabama Facility that complied with the SPCC regulations. The plan failed to list each spill source; indicate where any release from each source would flow; identify for each source its compliance with engineering and operational standards and spill control measures; and cover operational equipment such as transformers and equipment with hydraulic oil, all in violation of CWA Section 311, 33 U.S.C. § 1321, and 40 C.F.R. § 112.7 and Appendix C, Attachment C-II.

244. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of any regulation issued under subsection (j) of this section occurring from March 16, 2004, through January 12, 2009.

FORTY-SEVENTH CLAIM FOR RELIEF – CWA
(Failure to Comply with SPCC Regulations, McWane Cast Iron Pipe)

245. Paragraphs 1 through 106 are realleged and incorporated herein.

246. Based on an audit conducted by McWane, on one or more occasions, Defendant failed to ensure SPCC inspection forms at the Alabama Facility were signed and dated by the inspector, in violation of CWA Section 311, 33 U.S.C. § 1321, and 40 C.F.R. § 112.7(e).

247. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of any regulation issued under subsection (j) of this section occurring from March 16, 2004, through January 12, 2009.

FORTY-EIGHTH CLAIM FOR RELIEF – CWA
(Failure to Maintain Records, McWane Cast Iron Pipe)

248. Paragraphs 1 through 106 are realleged and incorporated herein.

249. Based on an audit conducted by McWane, for the period of May 18, 2004, through March 22, 2005, Defendant failed to maintain records at the Alabama Facility indicating in sufficient detail that required SPCC topics were covered in the training, in violation of CWA Section 311, 33 U.S.C. § 1321, and 40 C.F.R. § 112.7(f).

250. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of any regulation issued under subsection (j) of this section occurring from March 16, 2004, through January 12, 2009.

FORTY-NINTH CLAIM FOR RELIEF – CWA
(Failure to Install Secondary Containment Equipment, McWane Cast Iron Pipe)

251. Paragraphs 1 through 106 are realleged and incorporated herein.

252. Based on an audit conducted by McWane, for the period of May 18, 2004, through June 2, 2005, Defendant failed to install adequate secondary containment at the loading area at the Alabama Facility for 18 foot water-based coating tanks in the event of a failure, in

violation of CWA Section 311, 33 U.S.C. § 1321 and 40 C.F.R. § 112.1(b), 112.12(c)(3) and 112.7(c).

253. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of any regulation issued under subsection (j) of this section occurring from March 16, 2004, through January 12, 2009.

FIFTIETH CLAIM FOR RELIEF – CWA
(Unpermitted Discharge, McWane Ductile - New Jersey)

254. Paragraphs 1 through 106 are realleged and incorporated herein.

255. Based on an audit conducted by McWane, for the period of March 19, 2001, through September 1, 2002, Defendant failed to monitor a cupola cooling tower basin that overflowed to the stormwater drain at the New Jersey Facility, which constituted an unpermitted discharge in violation of a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342; N.J. Admin. Code § 7:14A-24.2(2015); and 40 C.F.R. § 122.26.

256. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CWA occurring from January 31, 1997, through March 15, 2004.

FIFTY-FIRST CLAIM FOR RELIEF – CWA
(Failure to Comply With Permit, McWane Ductile - New Jersey)

257. Paragraphs 1 through 106 are realleged and incorporated herein.

258. Based on an audit conducted by McWane, for the period of March 19, 2001, through September 1, 2002, Defendant failed to comply fully with storm water discharge permit requirements for lead, zinc, iron, cadmium, COD, TSS and pH at Outfalls 002, 003, and 004 at

the New Jersey Facility, in violation of a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342; N.J. Admin. Code § 7:14A-24.2; and 40 C.F.R. § 122.26.

259. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CWA occurring from January 31, 1997, through March 15, 2004.

FIFTY-SECOND CLAIM FOR RELIEF – CWA
(Failure to Conduct Daily Inspection Required by Storm Water Pollution Prevention Plan)
(McWane Ductile - New Jersey)

260. Paragraphs 1 through 106 are realleged and incorporated herein.

261. Based on an audit conducted by McWane, for the period of March 19, 2001, through November 16, 2004, Defendant failed to conduct daily inspections at the New Jersey Facility, as required by its SWPPP, in violation of a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342; N.J. Admin. Code § 7:14A-6.2; and 40 C.F.R. § 122.41.

262. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of the CWA occurring from January 31, 1997, through March 15, 2004, and \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

FIFTY-THIRD CLAIM FOR RELIEF – CWA
(Failure to Comply with SWPPP, McWane Ductile - New Jersey)

263. Paragraphs 1 through 106 are realleged and incorporated herein.

264. Based on an audit conducted by McWane, for the period of June 29, 2004, through November 23, 2004, Defendant McWane failed to comply with its SWPPP at the New Jersey Facility as follows: (1) out of date information regarding storm water collection and storage systems; (2) training documentation did not address storm water; (3) insufficient detail in daily inspection forms to ensure compliance, (4) failure to maintain records of quarterly or

annual inspections; and (5) failure to maintain records showing the 2004 annual compliance evaluation and certification had been conducted, in violation of a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342; N.J. Admin. Code § 7:14A-6.2; and 40 C.F.R. § 122.41.

265. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of the CWA occurring from March 16, 2004, through January 12, 2009.

FIFTY-FOURTH CLAIM FOR RELIEF – CWA
(Failure to Maintain Records, McWane Ductile - New Jersey)

266. Paragraphs 1 through 106 are realleged and incorporated herein.

267. Based on an audit conducted by McWane, for the period of June 29, 2004, through October 29, 2004, Defendant failed to maintain records indicating in sufficient detail that required SPCC topics were covered in training at the New Jersey Facility, in violation of Section 311 of the CWA, 33 U.S.C. § 1321, and 40 C.F.R. § 112.3.

268. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), Defendant McWane is liable for civil penalties of not more than \$32,500 per day for each violation of any regulation issued under subsection (j) of this section occurring from March 16, 2004, through January 12, 2009.

FIFTY-FIFTH CLAIM FOR RELIEF – CWA
(Failure to Comply with SPCC Plan, McWane Ductile - New Jersey)

269. Paragraphs 1 through 106 are realleged and incorporated herein.

270. Based on an audit conducted by McWane, for the period of June 29, 2004, through November 15, 2004, Defendant failed to have an SPCC plan at the New Jersey Facility that addressed integrity testing for bulk storage tanks, in violation of CWA Section 311, 33 U.S.C. § 1321, and 40 C.F.R. § 112.7.

271. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), Defendant McWane is liable for civil penalties of not more than \$32,500 per day for each violation of any regulation issued under subsection (j) of this section occurring from March 16, 2004, through January 12, 2009.

FIFTY-SIXTH CLAIM FOR RELIEF – CWA
(Failure to Comply with SPCC Plan, McWane Ductile - New Jersey)

272. Paragraphs 1 through 106 are realleged and incorporated herein.

273. Based on an audit conducted by McWane, for the period of June 29, 2004, through December 1, 2004, Defendant failed to comply with its SPCC plan at the New Jersey Facility when the compressor blowdown in the machine shop was allowed to accumulate on the floor, in violation of CWA Section 311, 33 U.S.C. § 1321, and 40 C.F.R. § 112.7.

274. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), Defendant McWane is liable for civil penalties of not more than \$32,500 per day for each violation of any regulation issued under subsection (j) of this section occurring from March 16, 2004, through January 12, 2009.

FIFTY-SEVENTH CLAIM FOR RELIEF – RCRA
(Improper Storage, McWane Ductile - New Jersey)

275. Paragraphs 1 through 106 are realleged and incorporated herein.

276. Based on an audit conducted by McWane, from June 29, 2004, through December 15, 2004, Defendant failed to prevent potential soil and groundwater contamination at the New Jersey Facility in connection with the closure of two underground storage tanks under the paint line, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b; N.J. Admin. Code § 7:14B-9.2; and 40 C.F.R. § 280 Subpart G.

277. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

FIFTY-EIGHTH CLAIM FOR RELIEF – RCRA
(Failure to Have Waste Minimization Plan, McWane Cast Iron Pipe)

278. Paragraphs 1 through 106 are realleged and incorporated herein.

279. Based on an audit conducted by McWane, Defendant failed to have a written waste minimization plan or procedure in place at the Alabama Facility, in violation of Section 3002 of RCRA, 42 U.S.C. § 6922; 40 C.F.R. § 262.27; and Ala. Admin. Code r. 335-14-3-.02(8), as of date of the audit.

280. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of RCRA occurring from January 31, 1997, through March 15, 2004.

FIFTY-NINTH CLAIM FOR RELIEF – RCRA
(Failure to Identify Facility as a Large Quantity Generator)
(McWane Cast Iron Pipe)

281. Paragraphs 1 through 106 are realleged and incorporated herein.

282. Based on an audit conducted by McWane, Defendant incorrectly listed the Alabama Facility as a small quantity generator on the Hazardous Waste Activity Notification, in violation of Section 3002 of RCRA, 42 U.S.C. § 6922; 40 C.F.R. § 262.12; and Ala. Admin. Code r. 335-14-3-.01(4), for the period of May 18, 2004, through September 8, 2004.

283. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SIXTIETH CLAIM FOR RELIEF – RCRA
(Failure to Identify Facility as a Large Quantity Generator)
(McWane Cast Iron Pipe)

284. Paragraphs 1 through 106 are realleged and incorporated herein.

285. Based on an audit conducted by McWane, Defendant incorrectly listed the Alabama Facility as a small quantity generator in its biennial RCRA report, in violation of Section 3002 of RCRA, 42 U.S.C. § 6922; 40 C.F.R. § 262.12; and Ala. Admin. Code r. 335-14-3-.01(4), for the period of May 18, 2004, through September 8, 2004.

286. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SIXTY-FIRST CLAIM FOR RELIEF – RCRA
(Failure to Have Complete Waste Minimization Plan, McWane Cast Iron Pipe)

287. Paragraphs 1 through 106 are realleged and incorporated herein.

288. Based on an audit conducted by McWane, Defendant failed to have in place a complete Waste Minimization Plan at the Alabama Facility, in that it failed to include all required components, in violation of Section 3002 of RCRA, 42 U.S.C. § 6922; 40 C.F.R. § 262.27; and Ala. Admin. Code r. 335-14-3-.02(8), for the period of May 18, 2004, through October 28, 2004.

289. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SIXTY-SECOND CLAIM FOR RELIEF – RCRA
(Failure to Comply with Large Quantity Generator Training Requirements)
(McWane Cast Iron Pipe)

290. Paragraphs 1 through 106 are realleged and incorporated herein.

291. Based on an audit conducted by McWane, Defendant failed to provide specific annual hazardous waste training required of large quantity generators at the Alabama Facility, in violation of Section 3002 of RCRA, 42 U.S.C. § 6922; 40 C.F.R. §§ 262.34(a)(4) and 265.16; and Ala. Admin. Code r. 335-14-6-.02(7), for the period of May 18, 2004, through September 7, 2004.

292. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SIXTY-THIRD CLAIM FOR RELIEF – RCRA
(Failure to Maintain Records, McWane Cast Iron Pipe)

293. Paragraphs 1 through 106 are realleged and incorporated herein.

294. Based on an audit conducted by McWane, for the period of May 18, 2004, through September 7, 2004, Defendant failed to maintain complete records of universal waste training for personnel responsible for handling, labeling, or disposing of universal waste at the Alabama Facility, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 273.36; and Ala. Admin. Code r. 335-14-11-.03(7).

295. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SIXTY-FOURTH CLAIM FOR RELIEF – RCRA
(Failure to Comply with Waste Container Storage Area Requirements)
(McWane Cast Iron Pipe)

296. Paragraphs 1 through 106 are realleged and incorporated herein.

297. Based on an audit conducted by McWane, for the period of May 18, 2004, through September 7, 2004, Defendant failed to comply with hazardous waste container storage

area requirements at the Alabama Facility in the following areas: (1) where baghouse dust was collected and stored; (2) at the back wall of a hazardous waste storage cage that was not secure; and (3) where waste was deposited beyond the containment wall of an exempt waste bunker, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. §§ 264.31 and 264.175; and Ala. Admin. Code r. 335-14-3-.03, 335-14-5-.03(2) and 335-14-5-.09(6).

298. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SIXTY-FIFTH CLAIM FOR RELIEF – RCRA
(Failure to Comply with Hazardous Storage Container Requirements)
(McWane Cast Iron Pipe)

299. Paragraphs 1 through 106 are realleged and incorporated herein.

300. Based on an audit conducted by McWane, for the period of May 18, 2004, through November 1, 2004, Defendant failed to conduct daily inspections at the Alabama Facility to ensure appropriate cleanup of baghouse dust escaping from roll-off containers, in violation of RCRA Section 3002, 42 U.S.C. § 6922; Ala. Admin. Code r. 335-14-5-.09(5) and 335-14-3-.03; and 40 C.F.R. § 264.174.

301. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SIXTY-SIXTH CLAIM FOR RELIEF – RCRA
(Failure to Label Universal Waste Containers, McWane Cast Iron Pipe)

302. Paragraphs 1 through 106 are realleged and incorporated herein.

303. Based on an audit conducted by McWane, for the period of May 18, 2004, through October 21, 2004, Defendant failed to properly label universal waste containers for

storage of florescent bulbs with the date they were placed into the storage area at the Alabama Facility, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 273.34 and 273.35(c) and Ala. Admin. Code r. 335-14-11-.03.

304. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SIXTY-SEVENTH CLAIM FOR RELIEF – RCRA
(Failure to Develop Medical Waste Management Plan, McWane Cast Iron Pipe)

305. Paragraphs 1 through 106 are realleged and incorporated herein.

306. Based on an audit conducted by McWane, during the period from May 18, 2004, through September 8, 2004, McWane failed to have in place a medical waste management plan at the Alabama Facility, in violation of Ala. Admin. Code r. 335-17-2-.01(2).

307. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SIXTY-EIGHTH CLAIM FOR RELIEF – RCRA
(Failure to Provide Notification of Used Oil Activity, McWane Cast Iron Pipe)

308. Paragraphs 1 through 106 are realleged and incorporated herein.

309. Based on an audit conducted by McWane, for the period of May 18, 2004, through November 9, 2004, Defendant failed to provide notification of used oil activities at the Alabama Facility, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 279.22; and Ala. Admin. Code r. 335-14-17-.03(4).

310. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SIXTY-NINTH CLAIM FOR RELIEF – RCRA
(Failure to Manage Used Oil, McWane Cast Iron Pipe)

311. Paragraphs 1 through 106 are realleged and incorporated herein.

312. Based on an audit conducted by McWane, for the period of May 18, 2004, through September 8, 2004, Defendant failed to have sufficient secondary containment for storage of used oil at the Alabama Facility, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. §§ 279.22 and 279.54(c); and Ala. Admin. Code r. 335-14-17-.03, 335-14-17-.05(7)(d), 335-14-17-.06(5)(c), and 335-14-17-07(5)(c).

313. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SEVENTIETH CLAIM FOR RELIEF – RCRA
(Failure to Comply with Large Quantity Generator Requirements)
(McWane Ductile - New Jersey)

314. Paragraphs 1 through 106 are realleged and incorporated herein.

315. Based on an audit conducted by McWane, during the period from March 19, 2001, through December 31, 2001, Defendant failed to characterize solid waste as hazardous at the New Jersey Facility and failed to notify the EPA that the Facility was a large quantity generator, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. §§ 262.11 and 262.12; and N.J. Admin. Code § 7:26G-6.1.

316. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of RCRA occurring from January 31, 1997, through March 15, 2004.

SEVENTY-FIRST CLAIM FOR RELIEF – RCRA
(Failure to Maintain Weekly Inspections of Hazardous Waste Storage Area)
(McWane Ductile - New Jersey)

317. Paragraphs 1 through 106 are realleged and incorporated herein.

318. Based on an audit conducted by McWane, during the period from March 19, 2001, through October 1, 2004, Defendant failed to inspect the hazardous waste storage area at the New Jersey Facility at least once per seven days, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 265.174; and N.J. Admin. Code § 7:26G-9.1.

319. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of RCRA occurring from January 31, 1997, through March 15, 2004, and \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

SEVENTY-SECOND CLAIM FOR RELIEF – RCRA
(Failure to Comply with Used Oil Labeling Requirements)
(McWane Ductile - New Jersey)

320. Paragraphs 1 through 106 are realleged and incorporated herein.

321. Based on an audit conducted by McWane, during the period from March 19, 2001, through October 1, 2004, Defendant failed to properly label used oil containers at the New Jersey Facility, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 279.22(c)(1); and N.J. Admin. Code § 7:26A-6.4(d)(4).

322. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of RCRA occurring from

January 31, 1997, through March 15, 2004, and \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

SEVENTY-THIRD CLAIM FOR RELIEF – RCRA
(Improper Disposal of Universal Waste, McWane Ductile - New Jersey)

323. Paragraphs 1 through 106 are realleged and incorporated herein.

324. Based on an audit conducted by McWane in March of 2001, from the date of the audit through October 1, 2004, Defendant improperly disposed of “universal waste” within the meaning of N.J. Admin. Code § 7:26A-1.3 at the New Jersey Facility, including fluorescent bulbs, lead-acid and nickel cadmium (NiCd) batteries, mercury wastes and computer components, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 273 Subpart B, including 40 C.F.R. §§ 273.11 and 273.13-18; and within the meaning of N.J. Admin. Code § 7:26A-7.1.

325. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of RCRA occurring from January 31, 1997, through March 15, 2004, and \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

SEVENTY-FOURTH CLAIM FOR RELIEF – RCRA
(Failure to File an Updated Hazardous Waste Notification Form)
(McWane Ductile - New Jersey)

326. Paragraphs 1 through 106 are realleged and incorporated herein.

327. Based on an audit conducted by McWane, Defendant failed to file with EPA an updated facility hazardous waste notification form for the New Jersey Facility (EPA Form 8700-12), as required as of the date of the audit, June 29, 2004, to November 5, 2004, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 262.12; and N.J. Admin. Code § 7:26G-6.1.

328. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SEVENTY-FIFTH CLAIM FOR RELIEF – RCRA
(Failure to Have Current Hazardous Waste Contingency Plan)
(McWane Ductile - New Jersey)

329. Paragraphs 1 through 106 are realleged and incorporated herein.

330. Based on an audit conducted by McWane, Defendant failed to have in place a current RCRA Hazardous Waste Contingency Plan at the New Jersey Facility, as of the date of the audit, June 29, 2004, through October 30, 2004, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 265.54; and N.J. Admin. Code § 7:26G-9.1.

331. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SEVENTY-SIXTH CLAIM FOR RELIEF – RCRA
(Failure to Have Waste Minimization Plan, McWane Ductile - New Jersey)

332. Paragraphs 1 through 106 are realleged and incorporated herein.

333. Based on an audit conducted by McWane, Defendant failed to have a written waste minimization plan or procedure in place at the New Jersey Facility, as of the date of the audit, June 29, 2004, through November 5, 2004, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 262.27; and N.J. Admin. Code § 7:26G-6.1.

334. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SEVENTY-SEVENTH CLAIM FOR RELIEF – RCRA
(Failure to Comply with Large Quantity Generator Requirements)
(McWane Ductile - New Jersey)

335. Paragraphs 1 through 106 are realleged and incorporated herein.

336. Based on an audit conducted by McWane, Defendant failed to comply with large quantity generator requirements at the New Jersey Facility, including failing to submit Hazardous Waste Reports for reporting years 2002 and 2003 and inadequate waste characterization procedures, which caused the Facility not to be classified as a large quantity generator, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. §§ 262.11, and 262.12; and N.J. Admin. Code § 7:26G-6.1.

337. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$27,500 per day for each violation of RCRA occurring from January 31, 1997, through March 15, 2004, and \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

SEVENTY-EIGHTH CLAIM FOR RELIEF – RCRA
(Failure to Implement Hazardous Waste Training Program)
(McWane Ductile - New Jersey)

338. Paragraphs 1 through 106 are realleged and incorporated herein.

339. Based on an audit conducted by McWane on or about June 29, 2004, from the date of the audit through November 11, 2004, Defendant failed to implement the required hazardous waste training program and maintain records of such training at the New Jersey Facility, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 265.16; and N.J. Admin. Code § 7:26G-9.1.

340. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

SEVENTY-NINTH CLAIM FOR RELIEF – RCRA
(Failure to Comply with Hazardous Waste Communication/Alarm System Requirements)
(McWane Ductile - New Jersey)

341. Paragraphs 1 through 106 are realleged and incorporated herein.

342. Based on an audit conducted by McWane, Defendant failed to have the required communication and alarm system in place for hazardous waste handling activities at the New Jersey Facility, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. §§ 265.32 and 265.34; and N.J. Admin. Code § 7:26G-9.1.

343. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

EIGHTIETH CLAIM FOR RELIEF – RCRA
(Failure to Familiarize Local Authorities with Facility's Hazardous Waste Operations)
(McWane Ductile - New Jersey)

344. Paragraphs 1 through 106 are realleged and incorporated herein.

345. Based on an audit conducted by McWane on June 29, 2004, from the date of the audit through November 8, 2004, Defendant failed to make arrangements to familiarize local authorities with the New Jersey Facility's hazardous waste operations and its emergency procedures, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 265.37; and N.J. Admin. Code § 7:26G-9.1.

346. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

EIGHTY-FIRST CLAIM FOR RELIEF – RCRA
(Failure to Maintain Weekly Inspections of Hazardous Waste Storage Area)
(McWane Ductile - New Jersey)

347. Paragraphs 1 through 106 are realleged and incorporated herein.

348. Based on an audit conducted by McWane on June 29, 2004, from the date of the audit through October 21, 2004, Defendant failed to inspect the hazardous waste storage area at the New Jersey Facility at least once every seven days, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 265.174; and N.J. Admin. Code § 7:26G-9.1.

349. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

EIGHTY-SECOND CLAIM FOR RELIEF – RCRA
(Failure to Properly Label Hazardous Waste Storage Containers)
(McWane Ductile - New Jersey)

350. Paragraphs 1 through 106 are realleged and incorporated herein.

351. Based on an audit conducted by McWane on or about June 29, 2004, from the date of the audit through October 31, 2004, Defendant failed to properly label and date hazardous waste storage containers at the New Jersey Facility and failed to inspect the containers for integrity, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 265; and N.J. Admin. Code § 7:26G-9.1.

352. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

EIGHTY-THIRD CLAIM FOR RELIEF – RCRA
(Failure to Comply with Storage Requirements, McWane Ductile - New Jersey)

353. Paragraphs 1 through 106 are realleged and incorporated herein.

354. Based on an audit conducted by McWane on or about June 29, 2004, from the date of the audit through October 25, 2004, Defendant failed to have markings delineating hazardous waste loading and unloading areas at the New Jersey Facility, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. §§ 262.34 and 265.31; and N.J. Admin. Code §§ 7:26G-6.1 and 7:26G-9.1.

355. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

EIGHTY-FOURTH CLAIM FOR RELIEF – RCRA
(Failure to Comply with Universal Waste Management Requirements)
(McWane Ductile - New Jersey)

356. Paragraphs 1 through 106 are realleged and incorporated herein.

357. Based on an audit conducted by McWane on or about June 29, 2004, from the date of the audit through October 28, 2004, Defendant failed to comply with “universal waste” management program requirements at the New Jersey Facility, including: (1) no manifests regarding waste shipments off-site; (2) no waste battery and lamp storage area or management program; (3) no records for universal waste streams; and (4) no records of training describing proper handling and emergency procedures, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 273 Subpart B, including 273.13-18; and N.J. Admin. Code § 7:26A-7.1.

358. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

EIGHTY-FIFTH CLAIM FOR RELIEF – RCRA
(Failure to Comply with Documentation Requirements for Medical Waste Transport)
(McWane Ductile - New Jersey)

359. Paragraphs 1 through 106 are realleged and incorporated herein.

360. Based on an audit conducted by McWane on or about June 29, 2004, from the date of the audit through March 9, 2005, Defendant failed to keep manifests on-site with respect to the off-site shipment of medical waste at the New Jersey Facility, in violation of RCRA Section 3002, 42 U.S.C. § 6922; and N.J. Admin. Code §7:26-3A.19.

361. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

EIGHTY-SIXTH CLAIM FOR RELIEF – RCRA
(Failure to Comply with Documentation Requirements for Used Oil Transport)
(McWane Ductile - New Jersey)

362. Paragraphs 1 through 106 are realleged and incorporated herein.

363. Based on an audit conducted by McWane on or about June 29, 2004, from the date of the audit through October 28, 2004, Defendant failed to maintain and have available records at the New Jersey Facility identifying the transporter used to transport oil off-site, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 279.24; and N.J. Admin. Code § 7:26A-6.4.

364. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

EIGHTY-SEVENTH CLAIM FOR RELIEF – RCRA
(Improper Storage of Used Oil, McWane Ductile - New Jersey)

365. Paragraphs 1 through 106 are realleged and incorporated herein.

366. Based on an audit conducted by McWane on or about June 29, 2004, from the date of the audit through October 28, 2004, Defendant failed to comply with used oil storage requirements at the New Jersey Facility, in that several drums in the oil storage area showed evidence of leakage, in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 279.22(b); and N.J. Admin. Code § 7:26A-6.4.

367. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

EIGHTY-EIGHTH CLAIM FOR RELIEF – RCRA
(Improper Labeling of Used Oil Containers, McWane Ductile - New Jersey)

368. Paragraphs 1 through 106 are realleged and incorporated herein.

369. Based on an audit conducted by McWane on or about June 29, 2004, from the date of the audit through December 23, 2004, Defendant failed to comply with used oil storage requirements at the New Jersey Facility, in that containers and above-ground storage tanks in which used oil was stored were labeled “Waste Oil” rather than “Used Oil,” in violation of RCRA Section 3002, 42 U.S.C. § 6922; 40 C.F.R. § 279.22(c); and N.J. Admin. Code § 7:26A-6.4.

370. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), McWane is liable for civil penalties of not more than \$32,500 per day for each violation of RCRA occurring from March 16, 2004, through January 12, 2009.

EIGHTY-NINTH CLAIM FOR RELIEF – TSCA
(Failure to Label PCB Transformers, McWane Cast Iron Pipe)

371. Paragraphs 1 through 106 are realleged and incorporated herein.

372. Based on an audit conducted by McWane, from June 1, 2000, through March 1, 2002, Defendant failed to determine whether transformers at the Alabama Facility contained PCBs and properly label them, in violation of 40 C.F.R. §§ 761.40(a)(2), (c)(1) and (j).

373. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, McWane is liable for civil penalties of not more than \$27,500 per day for each violation of TSCA occurring from January 31, 1997, through March 15, 2004.

NINETIETH CLAIM FOR RELIEF – TSCA
(Failure to Meet PCB Recordkeeping Requirements, McWane Cast Iron Pipe)

374. Paragraphs 1 through 106 are realleged and incorporated herein.

375. Based on an audit conducted by McWane, from May 18, 2004, through September 8, 2004, Defendant failed to maintain records sufficient to allow the audit team to demonstrate the “status” of each of the PCB items at the Alabama Facility identified in the ADEM 2001 inspection report, in violation of 40 C.F.R. § 761.180(a).

376. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, McWane is liable for civil penalties of not more than \$32,500 per day for each violation of TSCA occurring from March 16, 2004, through January 12, 2009.

PRAYER FOR RELIEF:

WHEREFORE, Plaintiffs United States of America and the Alabama Department of Environmental Management respectfully request that this Court grant the following relief:

A. A judgment assessing civil penalties against Defendant under the CAA, RCRA, TSCA, and Section 309(d) of the CWA, not to exceed \$27,500 per day for each violation occurring from January 31, 1997, through March 15, 2004, and not to exceed \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

B. A judgment assessing civil penalties against Defendant under Section 311(b)(7)(C) of the CWA, not to exceed \$27,500 per day for each violation of any regulation issued under subsection (j) of this section occurring from January 31, 1997, through March 15, 2004, and \$32,500 per day for each violation occurring from March 16, 2004, through January 12, 2009.

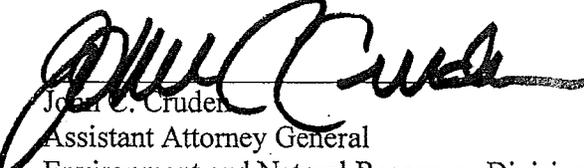
C. A judgment assessing civil penalties against Defendant under EPCRA not to exceed \$27,500 per day for the first violation and \$82,500 per day for each subsequent violation for violations occurring from January 31, 1997, through March 15, 2004, and \$32,500 per day for the first violation and \$97,500 per day for each subsequent violation occurring from March 16, 2004, through January 12, 2009.

D. Award Plaintiffs their costs and disbursements in this action.

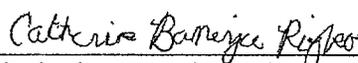
E. Award such other relief as this Court may deem just and proper.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: _____


John C. Cruden
Assistant Attorney General
Environment and Natural Resources Division

Date: 8/26/15


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