

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. <u>1:16-cv-242</u>
	)	
NEWPORT BIODIESEL, INC.,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT

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

I. NATURE OF ACTION

1. This is a civil action pursuant to Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b), Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045(c)(1), and Section 311(b)(7)(c) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(7)(C). The United States seeks civil penalties and injunctive relief against Newport Biodiesel, Inc. (“Newport Biodiesel” or “Defendant”) for violations of federal regulations promulgated pursuant to Section 112 of the CAA, 42 U.S.C. § 7412; for violations of Sections 502(a) and 503(c) of the CAA, 42 U.S.C. §§ 7661a(a) and 7661b(c); for violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1); for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and regulations promulgated thereunder; and for violations of regulations promulgated pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321.

II. JURISDICTION, AUTHORITY AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and over Defendant Newport Biodiesel, pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4); and Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1319(b)(7)(E).

3. Authority to bring this action is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519; Sections 113(b) and 305 of the CAA, 42 U.S.C. §§ 7413(b) and 7605; Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4); and Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7).

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), and Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), because the Defendant Newport Biodiesel is a Rhode Island corporation with its sole manufacturing facility in Rhode Island.

III. NOTICE

5. The United States has provided or will provide notice of the commencement of this action to the State of Rhode Island pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

IV. DEFENDANT

6. Defendant Newport Biodiesel is a privately-held corporation, organized under the laws of the State of Rhode Island, with its principal business office and sole manufacturing facility located at 312 Connell Highway, Newport, Rhode Island.

7. At all times relevant to this action, Newport Biodiesel has operated, and continues to operate, a biodiesel manufacturing facility (“Facility”) at the above-listed address.

8. Newport Biodiesel is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e); Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66; and Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

V. STATUTORY AND REGULATORY BACKGROUND

A. CLEAN AIR ACT – NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS: MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING

9. The CAA, 42 U.S.C. §§ 7401 – 7671q, establishes a comprehensive scheme for protecting and enhancing the quality of the nation’s air so as to promote public health and welfare. *See* Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).

10. Section 112 of the CAA, 42 U.S.C. § 7412, lists various hazardous air pollutants (“HAPs”) and requires EPA to establish national emissions standards for these HAPs. Methanol is one of the listed HAPs. *See* Section 112(b)(1) of the CAA, 42 U.S.C. § 7412(b)(1).

11. Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), defines the term “major source” to include any source that has the potential to emit 10 tons or more per year of any HAP or 25 tons or more per year of any combination of HAPs.

12. Pursuant to the Section 112 of the CAA, EPA has promulgated the National Emissions Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing (“MON”) at 40 C.F.R. Part 63, Subpart FFFF, §§ 63.2430 - .2550. The MON incorporates various general provisions and requirements contained in 40 C.F.R. Part 63, Subpart A, §§ 63.1 - .16, also promulgated pursuant to Section 112 of the CAA.

B. CLEAN AIR ACT – TITLE V OPERATING PERMIT PROGRAM

13. Subchapter V of the CAA (referred to as “Title V”) , 42 U.S.C. §§

7661 - 7661f, establishes an operating permit program for various air pollution sources, including all sources subject to standards or regulations under Section 112 of the CAA, to consolidate all of the source's CAA requirements into one permit.

14. Pursuant to Section 502 of the CAA, 42 U.S.C. § 7661a, EPA promulgated regulations at 40 C.F.R. Part 70 to implement the Title V operating permit program. Pursuant to Section 502(d) of the CAA and 40 C.F.R. § 70.4, states were required to submit their Title V permit programs for EPA's approval. Rhode Island's Title V permit program, which is set out in Rhode Island Air Pollution Control Regulation 29, was fully approved by EPA on November 30, 2001. *See* 66 Fed. Reg. 49839 (Oct. 1, 2001).

C. CLEAN AIR ACT – SECTION 112(R)(1) GENERAL DUTY CLAUSE

15. CAA Section 112(r), 42 U.S.C. § 7412(r), entitled "Prevention of Chemical Releases," was added to the CAA as part of the 1990 CAA Amendments to help prevent the accidental release of hazardous chemicals and to minimize the consequences of such releases.

16. Section 112(r)(1) of the CAA, known as the "General Duty Clause," provides, in pertinent part:

The owners and operators of stationary sources producing, processing, handling or storing [any extremely hazardous] substances have a general duty to identify hazards which may result from such releases [of extremely hazardous substances] using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

See 42 U.S.C. § 7412(r)(1).

17. The term "extremely hazardous substance" means an extremely hazardous substance within the meaning of the CAA's General Duty Clause. Such substances include any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury or property damage due to its toxicity, reactivity, flammability or corrosivity. *See*

Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989). The release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion, or other reaction would create a presumption that such substance is extremely hazardous. *Id.*

18. Pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), the term “extremely hazardous substances” includes, but is not limited to, substances listed in 40 C.F.R. § 68.130, and in 40 C.F.R. Part 355, Appendices A and B, published under Section 302 of EPCRA, 42 U.S.C. § 11002.

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

D. CLEAN AIR ACT – CIVIL PENALTIES

20. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to seek civil penalties of up to \$25,000 per day for each violation of any requirement or prohibition of Subchapter I of the CAA, 42 U.S.C. §§ 7401-7515, including the CAA Section 112(r)(1) General Duty Clause, and of regulations promulgated under Subchapter I of the CAA, including the MON. Section 113(b) of the CAA also authorizes the above-described penalties for violations of Subchapter V (Title V) of the CAA and of regulations promulgated thereunder.

21. Pursuant to the Debt Collection Improvement Act (“DCIA”), 31 U.S.C. § 3701, and EPA’s implementing regulations for the DCIA set out at 40 C.F.R. Part 19, the maximum civil penalty per day for each CAA violation has been increased from \$25,000 to \$27,500 for violations occurring from January 31, 1997, through March 15, 2004; to \$32,500 for violations

occurring from March 16, 2004 through January 12, 2009, and to \$37,500 for violations occurring from January 13, 2009 to the present.

**E. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT –
SECTION 312 REPORTING**

22. EPCRA establishes requirements for federal, state and local governments and industry regarding emergency planning for, and reporting on, hazardous and toxic chemicals.

23. Section 312 of EPCRA, 42 U.S.C. § 11022, requires that owners or operators of facilities that must prepare or have available a material data safety sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”) and regulations promulgated thereunder must also prepare and submit annually by March 1st an emergency and hazardous chemical inventory form containing information with respect to the preceding calendar year to certain state and local emergency response authorities. See EPCRA Section 312(a), 42 U.S.C. § 11022(a).

24. The term “MSDS” has been replaced by the term “safety data sheet” (“SDS”) in OSHA’s hazard communication regulations at 29 C.F.R. § 1910.1200.

25. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), the Administrator of EPA may bring an action for a civil penalty of up to \$25,000 for each violation of any requirement of EPCRA Section 312, 42 U.S.C. § 11022. Pursuant to the DCIA and its implementing regulations at 40 C.F.R. Part 19, the maximum civil penalty for each EPCRA violation has been increased from \$25,000 to \$27,500 for violations occurring from January 31, 1997, through March 15, 2004; to \$32,500 for violations occurring from March 16, 2004 through January 12, 2009, and to \$37,500 for violations occurring from January 13, 2009 to the present.

**F. CLEAN WATER ACT – SPILL PREVENTION CONTROL AND
COUNTERMEASURE PLANS**

26. Pursuant to CWA Section 311(j), 33 U.S.C. § 1321(j), EPA has promulgated the Oil Pollution Prevention (“OPP”) Regulations at 40 C.F.R. Part 112. These regulations establish procedures, methods and requirements for preventing the discharge of oil and oil products into the waters of the United States.

27. The OPP Regulations apply to owners or operators of non-transportation-related onshore or offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in potentially harmful quantities to navigable waters of the United States or adjoining shorelines. *See* 40 C.F.R. § 112.1(b).

28. Owners or operators of such facilities must prepare and fully implement a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”). *See* 40 C.F.R. § 112.3.

29. The CWA authorizes civil penalties of up to \$25,000 per day of violation for any person who fails to comply with any regulation (such as the OPP Regulations) issued under Section 311(j) of the CWA. *See* Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C). Pursuant to the DCIA and its implementing regulations at 40 C.F.R. Part 19, the maximum civil penalty per day authorized for violations of the OPP Regulations has been increased from \$25,000 to \$27,500 for violations occurring from January 31, 1997, through March 15, 2004; to \$32,500 for violations occurring from March 16, 2004 through January 12, 2009, and to \$37,500 for violations occurring from January 13, 2009 to the present.

VI. GENERAL ALLEGATIONS

30. Defendant Newport Biodiesel started construction at the Facility in June 2007 and began selling biodiesel from the Facility in January 2008.

31. The Facility currently consists of two leased buildings – known as the “Blue Building” and the “Yellow Building,” – and leased outdoor space adjacent to these buildings. Newport Biodiesel has leased and operated in the Blue Building since 2007. Newport Biodiesel has leased and operated in the Yellow Building since 2012.

32. Newport Biodiesel uses methanol, sodium methyle (in a 30% solution), and other chemicals in its biodiesel manufacturing processes at the Facility.

33. In 2010, Newport Biodiesel used approximately 520,555 pounds (78,872 gallons) of methanol and approximately 96,160 pounds of sodium methyle at the Facility.

34. In 2011, Newport Biodiesel used approximately 756,030 pounds (114,550 gallons) of methanol and approximately 73,900 pounds of sodium methyle at the Facility.

35. In 2012, Newport Biodiesel used approximately 1,425,059 pounds (215,918 gallons) of methanol and approximately 171,212 pounds of sodium methyle at the Facility.

36. In 2012, Newport Biodiesel stored a maximum amount of approximately 136,000 pounds of methanol at any one time at the Facility, and stored an average amount of approximately 43,095 pounds. Newport Biodiesel also stored a maximum amount of approximately 30,000 pounds of sodium methyle, and stored an average amount of approximately 12,000 pounds.

37. In 2013, Newport Biodiesel stored a maximum amount of approximately 136,975 pounds of methanol at any one time at the Facility, and stored an average amount of approximately 59,073 pounds. Newport Biodiesel also stored a maximum amount of approximately 30,000 pounds of sodium methyle, and stored an average amount of approximately 12,000 pounds.

38. In 2014, Newport Biodiesel stored a maximum amount of approximately 132,600 pounds of methanol at any one time at the Facility, and stored an average amount of approximately 66,300 pounds. Newport Biodiesel also stored a maximum amount of approximately 79,600 pounds of sodium methylete, and stored an average amount of approximately 30,400 pounds.

39. On March 5 and 6, 2013, EPA Region 1 conducted an inspection at the Facility regarding Newport Biodiesel's compliance with various federal environmental statutes and regulations, including compliance with the CAA's hazardous air pollutant emissions standards and federal and state air permitting requirements.

40. On June 20, 2013, EPA Region 1 conducted an inspection at the Facility regarding Newport Biodiesel's compliance with Section 112(r) of the CAA and EPCRA.

41. On July 3, 2013, EPA Region 1 issued to Newport Biodiesel a CAA Notice of Violation ("NOV") pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. The CAA NOV alleged, among other things, that Newport Biodiesel had violated the MON and CAA Title V permitting requirements. With the CAA NOV, EPA Region 1 issued to Newport Biodiesel a CAA and CWA Reporting Requirement pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), and Sections 308 and 311(m) of the CWA, 42 U.S.C. §§ 1318 and 1321(m). Newport Biodiesel subsequently provided responses to this CAA and CWA Reporting Requirement.

42. By letter dated July 30, 2013, Hughes Associates, Inc., an engineering and consulting firm retained by Newport Biodiesel to evaluate the Blue Building's compliance with Rhode Island State Building and Fire Codes, provided to Newport Biodiesel a code compliance review ("Code Review") for the Blue Building.

43. On September 18, 2013, Irwin Engineers, an engineering and consulting firm retained by Newport Biodiesel to conduct a hazard analysis for its biodiesel manufacturing processes, including its use of methanol and sodium methylate 30% at the Facility, provided to Newport Biodiesel a process hazard analysis for the Facility.

44. On June 27, 2014, EPA Region 1 issued to Newport Biodiesel a CAA Administrative Order On Consent (“AOC”) pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), that required Newport Biodiesel to take various actions to comply with the MON. Both EPA Region 1 and Newport Biodiesel agreed to and signed the MON AOC.

45. On September 12, 2014, EPA Region 1 issued to Newport Biodiesel a second CAA Reporting Requirement pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), regarding the Facility’s compliance with the CAA Section 112(r) General Duty Clause. Newport Biodiesel provided its responses to this second Reporting Requirement on November 6, 2014.

46. On March 12, 2015, EPA Region 1 issued to Newport Biodiesel a second CAA NOV alleging that Newport Biodiesel had violated the CAA Section 112(r) General Duty Clause.

VII. CLAIMS FOR RELIEF

A. CLEAN AIR ACT – MON VIOLATIONS

47. Defendant uses methanol in its biodiesel manufacturing processes at the Facility. Methanol is listed as a hazardous air pollutant (“HAP”) in Section 112(b)(1) of the CAA, 42 U.S.C. § 7412(b)(1).

48. Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), defines the term “major source” to include any source that emits or has the potential to emit 10 tons per year or more of any HAP, or 25 tons per year or more of any combination of HAPs.

49. Defendant's Facility has emitted and currently has the potential to emit methanol in quantities of 10 tons per year or more. Accordingly, Defendant has been and is currently a major source of HAPs as defined by CAA Section 112(a)(1).

50. Defendant operates a miscellaneous organic chemical manufacturing process unit ("MCPU") that uses methanol to produce biodiesel, and thus operates a MCPU as defined by the MON at 40 C.F.R. §§ 63.2435(b), 63.2440(c) and 63.2550.

51. Defendant's MCPU is a "new affected source" as defined by the MON at 40 C.F.R. § 63.2440(c).

52. Defendant started up its new affected MON source at the Facility by no later than July 26, 2012.

53. As a "new affected source" that started up after November 10, 2003, Defendant was required to comply with the MON upon startup of its affected source, in accordance with 40 C.F.R. § 63.2445(a)(2).

54. Accordingly, Defendant was required to comply with the MON by no later than July 26, 2012.

First Claim for Relief – Failure to Submit Initial Notification

55. Pursuant to 40 C.F.R. §63.2515(b)(2), a new affected MON source must submit an initial notification to EPA no later than 120 days after becoming subject to the MON.

56. Since the Facility became subject to the MON no later July 26, 2012, Defendant's initial notification was due by no later than November 23, 2012.

57. Defendant failed to submit its initial MON notification to EPA by November 23, 2012. Pursuant to the terms of the MON AOC, Defendant submitted its MON notification to EPA Region 1 on July 1, 2014. Accordingly, Defendant violated 40 CFR §63.2515(b)(2).

Second Claim for Relief – Failure to Submit Application for Construction/Reconstruction

58. Pursuant to 40 C.F.R. §§ 63.2540 and 63.5(d)(1), a new affected MON source must submit to EPA an application for approval of construction or reconstruction (“C/R Application”) at some time prior to the source’s MON compliance date.

59. Defendant’s MON compliance date was by no later than July 26, 2012. Therefore, Defendant’s C/R Application was due to EPA at some time prior to July 26, 2012.

60. Defendant failed to submit its C/R Application to EPA at any time prior to July 26, 2012. Pursuant to the terms of the MON AOC, Defendant submitted a C/R Application to EPA Region 1 on August 11, 2014. Accordingly, Defendant violated 40 C.F.R. §§ 63.2540 and 63.5(d)(1).

Third Claim for Relief – Failure to Submit Notification of Compliance Status Report

61. A new affected MON source must submit a notification of compliance status report (“NOCS report”) to EPA no later than 150 days after its MON compliance date. *See* 40 C.F.R. §§ 63.2520(a) and 63.2520(d)(1).

62. Defendant’s MON compliance date was no later than July 26, 2012. Therefore, Defendant’s NOCS report was due by no later than December 23, 2012.

63. To date, Defendant has not submitted a NOCS report to EPA. Accordingly, Defendant has violated 40 C.F.R. § 63.2520(d)(1).

Fourth Claim for Relief -- Failure to Submit Semiannual Compliance Reports

64. Pursuant to 40 C.F.R. §§ 63.2520(a) and (b)(1) - (b)(4), MON affected sources must submit semiannual compliance reports covering reporting periods from January 1 through June 30 and July 1 through December 31. The first compliance report must cover the period beginning on the source’s MON compliance date and ending on June 30 or December 31,

“whichever is the first date following the end of the first 6 months after the compliance date.” *See* 40 C.F.R. § 2520(b)(1).

65. Pursuant to 40 C.F.R. § 2520(b)(2), the first compliance report must be postmarked or delivered no later than the August 31st or February 28th following the end of the source’s first compliance reporting period.

66. Defendant’s first semiannual compliance report was due by no later than August 31, 2013, with subsequent reports due in February 2014, August 2014, February 2015, and August 2015.

67. To date, Defendant has submitted no semiannual compliance reports to EPA. Accordingly, Defendant has violated 40 C.F.R. §§ 63.2520(a) and (b)(1) - (b)(4).

Fifth Claim for Relief -- Failure to Install Emission Controls

68. The Facility’s biodiesel manufacturing process equipment, which includes a pretreatment reactor vessel, a pretreatment settling tank, a main reactor vessel, a main settling tank, a condensate/knockout drum, and other process tanks, constitutes one or more “Group 1 batch process vents” as defined by the MON at 40 C.F.R. § 63.2550(i).

69. Group 1 batch process vents are required by the MON to meet emission limits and install emission controls in accordance with Table 2 of the MON. *See* 40 C.F.R. § 63.2460(a).

70. Table 2 of the MON contains three emission limit and emission control options for Group 1 batch process vents.

71. Defendant was required to meet the MON’s emission limit and control requirements for its Group 1 batch process vents by its MON compliance date, i.e., by no later than July 26, 2012.

72. From July 26, 2012 to at least December 2015, when Defendant installed new emission controls approved pursuant to the terms of the MON AOC, Defendant did not comply with any of the batch process vent emission limit and control options contained in Table 2 of the MON. Accordingly, Defendant has violated 40 C.F.R. § 63.2460(a) and Table 2 of the MON.

73. Separately, the Facility's 10,000 gallon glycerin storage tank and 10,000 gallon methanol storage tank constitute "Group 1 storage tanks" as defined by the MON at 40 C.F.R. § 63.2550(i).

74. Group 1 storage tanks are required by the MON to meet either the applicable emission limits contained in Table 4 of the MON or a vapor balancing alternative. *See* 40 C.F.R. §§ 63.2470(a) and 63.2470(e).

75. Table 4 of the MON contains various emission limit and emission control options for Group 1 storage tanks.

76. Defendant was required to meet the MON's emission limit and control requirements for its Group 1 storage tanks by its MON compliance date, i.e., by no later than July 26, 2012.

77. From July 26, 2012 to at least December 2015, when Defendant installed new emission controls approved pursuant to the terms of the MON AOC, Defendant did not comply with any of the storage tank requirements contained in Table 4 of the MON or the vapor balancing alternative set out in 40 C.F.R. § 63.2470(e). Accordingly, Defendant has violated 40 C.F.R. §§ 63.2470(a) and 63.2470(e), and Table 4 of the MON.

Sixth Claim for Relief -- Failure to Implement Leak Detection and Repair Program

78. An affected MON source is required to implement an equipment leak detection and repair program (“LDAR program”) in accordance with Table 6 of the MON. *See* 40 C.F.R. § 63.2480(a).

79. Table 6 of the MON requires a new affected MON source to comply either with 40 C.F.R. Part 63, Subpart UU (National Equipment Standards for Equipment Leaks – Control Level 2 Standards) or with 40 C.F.R. Part 65, Subpart F (Equipment Leaks).

80. Defendant was required to meet the MON’s LDAR program requirements by its MON compliance date, i.e., by no later than July 26, 2012.

81. From July 26, 2012 until at least May 2016, Defendant had no LDAR program in place at the Facility. Accordingly, Defendant has violated 40 C.F.R. § 63.2480(a).

B. CLEAN AIR ACT – TITLE V VIOLATIONS

Seventh Claim for Relief – Failure to Apply for a Title V Permit and Operating without a Title V Permit

82. Section 503(c) of the CAA, 42 U.S.C. § 7661b(c), provides that any source required to have a Title V permit must apply for such permit no later than 12 months after the source becomes subject to an EPA-approved Title V permit program. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides, among other things, that after the effective date of an EPA-approved Title V permit program, no source subject to a standard or regulation promulgated under Section 112 of the CAA can lawfully operate without a Title V operating permit issued by the relevant permitting authority.

83. As alleged above in Section V.B, EPA fully approved Rhode Island’s Title V operating permit program on November 30, 2001.

84. Defendant became subject to the MON, a regulation promulgated under Section 112 of the CAA, by no later than July 26, 2012.

85. By no later than July 26, 2013, Defendant was required to apply to Rhode Island air permitting authorities for a Title V operating permit pursuant to Sections 502(a) and 503(c) of the CAA, 42 U.S.C. §§ 7661a(a) and 7661b(c).

86. To date, Defendant had not applied for or obtained a Title V operating permit, and has continued to operate its Facility without a Title V permit. Accordingly, Defendant has violated and continues to violate Sections 502(a) and 503(c) of the CAA, 42 U.S.C. §§ 7661a(a) and 7661b(c).

C. CLEAN AIR ACT -- SECTION 112(R) GENERAL DUTY CLAUSE VIOLATIONS

87. During Defendant's biodiesel manufacturing process, which takes place primarily in the Blue Building, methanol and sodium methylate 30% are reacted with waste vegetable oil to produce biodiesel, with glycerin as a byproduct.

88. Methanol, sodium methylate 30%, biodiesel, waste vegetable oil, and glycerin are all flammable or combustible liquids. The National Fire Protection Agency ("NFPA") classifies methanol as a Class IB flammable liquid, sodium methylate 30% as a Class IC flammable liquid; and biodiesel, waste vegetable oil and glycerin as Class IIIB combustible liquids. *See NFPA 30, Flammable and Combustible Liquids Code*, (2008 ed.) § 4.3.

89. Methanol and sodium methylate 30%, either alone or co-located with each other, are chemicals that may, as the result of short-term exposures associated with releases to the air, cause death, injury or property damage due to their toxicity, reactivity, flammability, volatility, and/or corrosivity.

90. Specifically, methanol is a flammable, easily ignitable liquid that burns in air. Methanol stays flammable even when mixed with large quantities of water – a 75% water, 25% methanol mixture is still a flammable liquid. In addition, methanol is toxic: ingestion of one to two ounces of methanol can cause death, and smaller amounts can cause blindness.

91. Sodium methylete is a flammable, toxic and corrosive solid. Sodium methylete 30%, a solution of 30% sodium methylete by weight in methanol, is flammable, toxic and corrosive. Sodium methylete 30% is toxic by ingestion, inhalation, and skin contact. It can cause eye and skin burns, blindness, respiratory failure, and death. Sodium methylete 30% reacts violently with water, and the reaction may release flammable and/or toxic gas.

92. Accordingly, both methanol and sodium methylete 30% are “extremely hazardous substances” within the meaning of the CAA’s General Duty Clause.

93. Due to the hazardous nature of methanol, the Methanol Institute, a trade association of companies that distribute and use methanol, has issued the Methanol Safe Handling Manual (“MSH Manual”), dated January 2013, a standard outlining the recognized and generally accepted good engineering practices for the methanol industry.

94. In collaboration with the American National Standards Institute, the American Society of Mechanical Engineers (“ASME”) has issued ASME A13.1-2007: Scheme for the Identification of Piping Systems (“ASME A13.1-2007”), a standard outlining the recognized and generally accepted good engineering practices for identifying hazardous materials conveyed in piping systems and their hazards when released into the environment. This standard is consistently relied on by industry experts to identify piping that conveys hazardous materials in order to better assess and minimize related hazards.

95. The Center for Chemical Process Safety of the American Institute of Chemical Engineers (“CCPS”) has issued Guidelines for Safe Warehousing of Chemicals (1988) (“CCPS Guidelines”), a set of guidelines designed to address the identification of potential hazards associated with the warehouse storage of chemicals in various container and packaging systems. This standard is consistently relied on by industry experts to identify potential hazards in chemical warehousing operations in order to minimize risk to employees, the surrounding population, the environment, property, and business operations.

96. The NFPA has developed NFPA 1, Fire Code (“NFPA 1”), which outlines recognized and generally accepted good engineering practices necessary to establish a reasonable level of fire and life safety and property protection from the hazards created by fire, explosion, and dangerous conditions. This code is consistently relied on by industry experts to identify, assess, and minimize such hazards, and is incorporated into the Rhode Island Fire Safety Code. *See Rhode Island Fire Safety Code Section 7, incorporating NFPA 1 (2012 ed.).*

97. The NFPA also has developed NFPA 30, Flammable and Combustible Liquids Code (“NFPA 30”) (2008 ed.), which outlines recognized and generally accepted good engineering practices to provide fundamental safeguards for the storage, handling, and use of flammable and combustible liquids, and which is incorporated by reference in NFPA 1. NFPA 1 (2012 ed.) § 66.1.1.

98. The International Code Council has issued the International Building Code (“IBC”) (2012 ed.), which outlines minimum safeguards that are recognized and generally accepted good engineering practices for the design and installation of building systems in order to address, among other things, conditions hazardous to life and property from fire, explosion, and other hazards, and to provide safety to fire fighters and emergency responders during

emergency operations. This code is consistently relied on by industry experts to safeguard public health and safety through building design and installation, and is incorporated into the Rhode Island State Building Code. *See* Rhode Island State Building Code, Regulation SBC-1 (2013).

99. EPA's Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) (May 2000) ("General Duty Clause Implementation Guidance"), found at <http://www.epa.gov/osweroe1/docs/chem/gdcregionalguidance.pdf>, focuses on the General Duty Clause and its implementation to promote safe operating practices and prevent chemical accidents. Chapter 2 of this guidance describes the applicability of the General Duty Clause and the obligations it imposes on owners and operators of stationary sources that process, handle, or store extremely hazardous substances.

100. As alleged above in this Section, the Facility's biodiesel manufacturing processes use methanol and sodium methyllate 30%, both of which are "extremely hazardous substances" within the meaning of the CAA's General Duty Clause.

101. The unanticipated emission of methanol and sodium methyllate 30%, either alone or in combination, into the ambient air from the Facility would constitute an "accidental release" as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

102. Defendant's Facility consists of buildings, structures and equipment from which an accidental release may occur, and is therefore a "stationary source" as that term is defined Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

103. Defendant operates the Facility, and thus is the "operator" of a stationary source as that term is defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

104. As the operator of a stationary source that processes, handles or stores extremely hazardous substances, Defendant is subject to the CAA's General Duty Clause.

Eighth Claim for Relief -- Failure to Identify Hazards

105. Pursuant to the General Duty Clause, owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances have a general duty to identify hazards which may result from accidental releases of extremely hazardous substances using appropriate hazard assessment techniques. See Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

106. The recommended industry practice and standard of care for businesses that handle, store, and use methanol and/or sodium methylate 30% is to conduct a hazard analysis to assess the hazards of all aspects of processes involving the flammable or combustible liquids by using appropriate techniques. See, *e.g.*, MSH Manual, Chapter 5, pp. 44, 50-51 (hazard analyses should be conducted on all aspects of the process using appropriate analytical techniques); NFPA 1 (2012 ed.) §§ 66.6.4.1 - 66.6.4.2 (hazard analysis required for operations involving flammable and combustible liquids to ensure that fire and explosion hazards are addressed); General Duty Clause Implementation Guidance, pp. 12-13 (duty to identify hazards requires determining intrinsic chemical hazards, the risks of accidental releases, and the potential effect of releases on the public and environment).

107. Defendant has processed, handled and/or stored, and continues to process, handle and/or store, large quantities of methanol and sodium methylate 30%, which are both extremely hazardous substances, in Defendant's manufacturing processes at the Facility.

108. Therefore, pursuant to the General Duty Clause, Defendant has had, and continues to have, a general duty to identify hazards which may result from accidental releases of methanol and sodium methyllate 30% using appropriate hazard assessment techniques.

109. From January 2008, when Defendant first began to sell biodiesel from the Facility, until September 18, 2013, Defendant had no hazard analysis for processes using methanol or sodium methyllate 30% at the Facility.

110. Accordingly, Defendant failed to identify hazards and violated the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Ninth Claim for Relief -- Failure to Design and Maintain a Safe Facility

111. Pursuant to the General Duty Clause, owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances have a general duty to design and maintain a safe facility taking such steps as are necessary to prevent accidental releases of such substances. *See* Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

112. The recommended industry practice and standard of care for facilities that handle, store and use flammable liquids is to provide a fire suppression system, the design of which is based on the amount of and the specific hazards posed by the flammable liquids in the area. *See, e.g.,* IBC (2012 ed.) §§ 307, 903.2.5 (buildings that contain large quantities of high hazard materials, including flammable liquids, must generally be provided with automatic sprinkler systems for fire suppression).

113. At all times relevant to this action, various drums, containers and/or process tanks, including the pretreatment reactor and biodiesel reactor tanks, containing methanol and/or sodium methyllate 30% used in the Defendant's biodiesel manufacturing processes, have been located and continue to be located in the Facility's Blue Building.

114. No automatic fire suppression system was installed in the Blue Building from 2008 to December 2015.

115. The recommended industry practice and standard of care is to label all piping containing hazardous materials to indicate the contents, direction of flow, and any additional details necessary to identify hazards. *See, e.g.*, ASME A13.1-2007 (establishes common scheme for identifying contents of piping systems, including those containing flammable and combustible materials); NFPA 1 (2012 ed.) § 60.5.1.6.2(2) (referencing ASME A13.1); MSH Manual, Chapter 3, p. 24 (“all piping and valves subject to carrying methanol should be consistently labeled, and direction of flow should be indicated”).

116. At the time of EPA Region 1’s inspection on June 20, 2013, none or almost none of the piping containing flammable or combustible hazardous materials in the Blue Building was labeled for contents and direction of flow, including piping connected to tanks and containers of methanol and sodium methylate 30%, and piping connected to the biodiesel process tanks, including the pretreatment tank, the biodiesel reactor tank, glycerin recovery and storage tanks, and methanol recovery tanks. The unlabeled piping connected to each of these containers and tanks contains methanol, sodium methylate 30%, glycerin, waste vegetable oil and/or biodiesel, which are all flammable or combustible materials, during various stages of the biodiesel manufacturing process.

117. The recommended industry practice and standard of care is to segregate and separate incompatible chemicals by a distance of not less than 20 feet. *See, e.g.*, NFPA 1 (2012 ed.) §§ 60.5.1.12, 66.9.17.1.1; CCPS Guidelines § 2.6.

118. At the time of EPA Region 1's inspection on June 20, 2013 inspection, eight 55-gallon drums containing methanol were stored in close proximity to six totes of sodium methyllate 30% (weighing 1,500 pounds each) in the Blue Building.

119. The co-location of these chemicals created the risk of fire/explosion and liberation of heat and flammable gases including hydrogen gas, which could occur if the chemicals were accidentally spilled or released and mixed together.

120. The recommended industry practice and standard of care is for flammable liquid storage tanks to be constructed of steel or other approved noncombustible materials. See, e.g., NFPA 30 (2008 ed.) §§ 9.1.1, 9.4.3; NFPA 1 (2012 ed.) §§ 66.9.4.1, 66.9.4.3; MSH Manual, Chapter 3, p. 26 (citing NFPA 30 and other sources).

121. At the time of EPA Region 1's inspection on June 20, 2013, the Facility contained an approximately 400-gallon tank that was constructed of polyethylene, a flammable material. This tank, designated as Tank T-503 and labeled as "Acid Methanol Mix Tank," routinely contained methanol, a highly flammable liquid.

122. Defendant's process hazard analysis, provided to Defendant on September 18, 2013, listed as a high priority recommendation that the Facility explore the elimination of Tank T-503 in order to address potential risks of fire, explosion, injury, property damage or release.

123. As alleged above in this Section, Defendant failed to install a fire suppression system, failed to properly label pipes containing flammable or other hazardous substances, failed to separate incompatible chemicals, and failed to properly store hazardous chemicals in the Facility's Blue Building.

124. Accordingly, Defendant failed to design and maintain a safe facility and violated the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

**D. EMERGENCY PLANNING AND COMMUNITY
RIGHT-TO-KNOW VIOLATIONS**

125. For calendar year 2010, Defendant's shipping records demonstrate that Defendant received maximum single shipments at the Facility of approximately 45,660 pounds of methanol; 750 pounds of sulfuric acid; 24,120 pounds of sodium methylete; and 44,520 pounds of glycerol (with 10% methanol).

126. For calendar year 2011, Defendant's shipping records demonstrate that Defendant received maximum single shipments at the Facility of approximately 45,630 pounds of methanol; 1,500 pounds of sulfuric acid; 24,100 pounds of sodium methylete; and 44,460 pounds of glycerol (with 10% methanol).

127. For calendar year 2012, Defendant's shipping records and other reported information demonstrate that Defendant stored at the Facility a maximum amount of approximately 136,600 pounds of methanol at any one time. Defendant also stored at the Facility a maximum amount at any one time of approximately 3,000 pounds of sulfuric acid, 30,000 pounds of sodium methylete, and 105,000 pounds of glycerol (with 10% methanol).

**Tenth Claim for Relief – Failure to Submit EPCRA Tier II
Hazardous Chemical Inventory Form for Year 2012**

128. As authorized by Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), EPA has promulgated minimum threshold levels of hazardous chemicals for the purposes of reporting under EPCRA Section 312, together with other provisions related to compliance with EPCRA Section 312, in regulations promulgated at 40 C.F.R. Part 370, 40 C.F.R. §§ 370.1 - 370.66 ("Part 370 Regulations").

129. Pursuant to the Part 370 Regulations at 40 C.F.R. § 370.10(a), the minimum threshold level for "hazardous chemicals" to trigger EPCRA Section 312 reporting is 10,000

pounds present at the facility at any one time. For hazardous chemicals that are also “extremely hazardous substances,” as listed in 40 C.F.R. Part 355, Appendices A and B (“Part 355 Appendices”), the minimum reporting threshold is 500 pounds or the threshold planning quantity listed for the substance in the Part 355 Appendices, whichever is lower. *See* 40 C.F.R. § 370.10(a)(1).

130. Defendant’s Facility consists of buildings and equipment, located on a single site, which are owned or operated by Defendant, and thus is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and in 40 C.F.R. § 370.66.

131. The owner or operator of a facility subject to the reporting requirements of EPCRA Section 312(a) must submit a “Tier I” hazardous chemical inventory form containing aggregate information by hazard category, or a “Tier II” form containing specific information by chemical, to the State emergency response commission (“SERC”), the local emergency planning committee (“LEPC”), and the local fire department. *See* EPCRA Sections 312(a) and (d), 42 U.S.C. §§ 11022(a) and (d), and 40 C.F.R. §§ 370.20, 370.40, and 370.44.

132. Pursuant to EPCRA Section 312(a), 42 U.S.C. §§ 11022(a), and 40 C.F.R. § 370.45, the Tier I or Tier II hazardous chemical inventory form must be submitted annually on or before March 1 and is required to contain information with respect to the preceding calendar year. In Rhode Island, facilities are required to submit Tier II rather than Tier I forms.

133. Methanol, biodiesel, diesel fuel, grease, sodium methyllate 30%, glycerol and sulfuric acid are “hazardous chemicals” as defined by OSHA regulations at 29 C.F.R. § 1910.1200(c), and at all times relevant to this action Defendant was required to prepare or have available onsite an MSDS (termed an SDS under current OSHA regulations) for each of these substances.

134. In calendar year 2012, Defendant's Facility stored methanol, biodiesel, diesel fuel, grease, sodium methyllate 30%, and glycerol (with 10% methanol), which are all "hazardous chemicals" as defined at 40 C.F.R. § 370.66. Further, the Facility in 2012 stored sulfuric acid, a hazardous chemical that is an "extremely hazardous substance" as that term is defined at 40 C.F.R. § 370.66.

135. In calendar year 2012, the Facility stored methanol, biodiesel, diesel fuel, grease, sodium methyllate 30%, and glycerol (with 10% methanol) in quantities of over 10,000 pounds at one or more times, and sulfuric acid in quantities of over 500 pounds at one or more times.

136. Thus, Defendant was subject to Tier II hazardous chemical inventory reporting requirements regarding the above-listed chemicals for calendar year 2012, and was required to submit a Tier II form for them by no later than March 1, 2013.

137. Defendant did not submit a Tier II hazardous chemical inventory form for calendar year 2012 by March 1, 2013; instead, Defendant submitted its Tier II form on June 25, 2013. Accordingly, Defendant violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.44 and 370.45.

**Eleventh Claim for Relief – Failure to Submit EPCRA Tier II
Hazardous Chemical Inventory Forms for Years 2011 and 2010**

138. In 2011, the Facility stored methanol, sodium methyllate and glycerol (with 10% methanol) in quantities of over 10,000 pounds at one or more times, and sulfuric acid in quantities of over 500 pounds at one or more times.

139. Thus, Defendant was subject to Tier II hazardous chemical inventory reporting requirements regarding the above-listed chemicals for calendar year 2011, and was required to submit a Tier II form for them by no later than March 1, 2012.

140. Similarly, in 2010, the Facility stored methanol, sodium methyllate and glycerol (with 10% methanol) in quantities of over 10,000 pounds at one or more times, and sulfuric acid in quantities of over 500 pounds at one or more times.

141. Thus, Defendant was subject to Tier II hazardous chemical inventory reporting requirements regarding the above-listed chemicals for calendar year 2010, and was required to submit a Tier II form for them by no later than March 1, 2011.

142. Defendant never submitted a Tier II form for either the 2011 or the 2010 calendar year, and accordingly violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.44 and 370.45.

E. CLEAN WATER ACT VIOLATIONS

Twelfth Claim for Relief – Failure to Prepare and Implement SPCC Plan

143. The Facility is located on land within the United States, and thus is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and the OPP Regulations at 40 C.F.R. § 112.2.

144. Defendant is the “owner or operator” of the Facility as defined by 40 C.F.R. § 112.2.

145. The Facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. §112.2 and Appendix A of 40 C.F.R. § 112.

146. The Facility stores waste vegetable oil and biodiesel, which is a fuel oil, and thus stores “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2.

147. The Facility has an aggregate aboveground storage capacity greater than 1,320 gallons of oil in containers that hold at least 55 gallons. Specifically, the Facility had an

aggregate aboveground oil storage capacity of more than 120,000 gallons in containers holding more than 55 gallons.

148. The Facility could reasonably be expected to discharge oil into Coasters Harbor, a navigable waterway located near the Facility and directly connected to Narragansett Bay.

149. Coasters Harbor and Narragansett bay are “navigable waters” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

150. The Facility is a non-transportation-related onshore facility that, due to its location and in the event of a significant uncontained release, could reasonably be expected to discharge oil into “navigable waters” of the United States.

151. Thus, the Facility is subject to the OPP Regulations at 40 C.F.R. Part 112.

152. As the owner or operator of a Facility subject to the OPP Regulations, Defendant is required to prepare and implement an SPCC plan. *See* 40 C.F.R. § 112.3.

153. Facilities that became operational after August 16, 2002 through November 10, 2011 were required to prepare and implement an SPCC Plan by November 10, 2011. *See* 40 C.F.R. § 112.3(a)(1).

154. Defendant started construction at the Facility in July 2007, began selling biodiesel from the Facility in 2008, and became subject to the OPP Regulations prior to 2011.

155. Thus, Defendant was required to prepare and implement an SPCC Plan by November 10, 2011.

156. Defendant did not prepare and implement an SPCC Plan by November 10, 2011. Instead, Defendant prepared and provided an initial SPCC Plan to EPA Region 1 in August 2013, and subsequently provided a final, signed SPCC Plan (dated June 11, 2014) to EPA Region 1 on June 12, 2014. Accordingly, Defendant violated 40 C.F.R. § 112.3(a)(1).

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Require Defendant to take any measures necessary to comply with the MON;
2. Require Defendant to apply for and obtain a CAA Title V permit for the Facility;
3. Require Defendant to take any measures necessary to comply with the CAA's

General Duty Clause;

4. Assess Defendant civil penalties of up to \$27,500 per day for each violation of any CAA, EPCRA or CWA statutory or regulatory requirements occurring between January 31, 1997 and March 15, 2004; penalties of up to \$32,500 per day for any such violations occurring between March 16, 2004 and January 12, 2009; and penalties of up to \$37,500 per day for violations occurring after January 12, 2009;

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

6. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Dated: June 01, 2016

/s/ Bradley L. Levine
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