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February 12, 1997

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FM: Patricia C. Hannigan
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RE: *Standard Chlorine Complaints*

Enclosed please find a draft complaint in the above. Please give me a call with your comments. Thanks.

GMS:PCH:clm

Enclosure

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) **Civil Action No. 96-**
)
 STANDARD CHLORINE OF)
 DELAWARE, INC.,)
)
 Defendant.)

COMPLAINT

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

NATURE OF THE CASE

1. This is an action for civil penalties and injunctive relief under Section 113(a) and (b) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a) and (b), against Standard Chlorine of Delaware, Inc. ("Standard Chlorine"), for failing to comply with National Emission Standards for Hazardous Air Pollutants ("NESHAPS"), in violation of 40 C.F.R. Subpart 61 and Section 112 of the CAA, 42 U.S.C. § 7412.

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JURISDICTION, AUTHORITY, NOTICE AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. The United States has authority to bring this action on behalf of the Administrator of EPA ("Administrator") under Section 305 of the CAA, 42 U.S.C. § 7605, and under 28 U.S.C. §§ 516 and 519.

4. Notice of the commencement of this action has been given to the State of Delaware Division of Natural Resources and Environmental Control ("DNREC"), the Delaware air pollution control agency, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

5. Defendant Standard Chlorine is a wholly-owned subsidiary of Standard Chlorine Chemical Company, has, and at all times relevant to this Complaint had, its principal place of business in Delaware City, Delaware, (the "Facility"), in the judicial District of Delaware.

6. Standard Chlorine is a "person" within the meaning of the CAA, as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is an "owner or operator" within the meaning of 42 U.S.C. §§ 7412(a)(9) and 7411(a)(5) and 40 C.F.R. § 61.02.

7. Venue is proper in this judicial district pursuant to Section 113 of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b), as this is the judicial district within

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which Standard Chlorine is doing business and did business at all times relevant to this Complaint, and is within the judicial district which the United States' claims arose.

GENERAL ALLEGATIONS

Hazardous Air Pollutants

8. At all relevant times, Standard Chlorine owned and operated the Facility in Delaware City, Delaware. At the Facility, Standard Chlorine manufactures and at all relevant times manufactured, *inter alia*, benzene; chlorobenzene; 1, 4-dichlorobenzene; and 1, 2, 4 - trichlorobenzene (collectively "chlorobenzene").

9. Chlorobenzene is a "hazardous air pollutant", the emission of which is subject to regulation pursuant to 42 U.S.C. § 7412 and 40 C.F.R. § 61.01(a).

10. In the course of manufacturing chlorobenzenes Standard Chlorine causes the product to pass through equipment containing open-ended valves or lines, through which samples of the product are extracted to test for quality.

11. Pursuant to 40 C.F.R. § 63.167(a)(1), open-ended valves or lines must be equipped with a cap, blind flange, plug or second valve, to prevent leakage.

12. The emission of chlorobenzene as a result of equipment leaks ("fugitive emission") is subject to regulation pursuant to 42 U.S.C. § 7412 and 40 C.F.R. § 61.110.

13. Pursuant to 42 U.S.C. 7412 and 40 C.F.R. Part 63, owners and operators of benzene-producing facilities are subject to certain "leak detection and repair" requirements,

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designed to limit fugitive emissions. These requirements include monitoring for leaks, calibrating leak detection instruments before use on each day of use, and keeping records regarding leak detection and repair.

Stratospheric Ozone Protections

14. Standard Chlorine also operates and at all relevant times operated, twelve refrigeration units, used to cool the product from a hot liquid to a solid, crystal form. For this purpose, it purchases refrigerant containing chlorofluorocarbons (CFCs), an ozone-depleting substance.

15. Operation of the refrigeration units is subject to the stratospheric ozone protection requirements of 42 U.S.C. 7671 *et seq.* and 40 C.F.R. Part 82, designed to limit emission of ozone-depleting substances, including CFC's.

Inspection and Notice

16. EPA inspected the Standard Chlorine facility on April 10, 1996 and on April 30, 1996 sent a request for information to Standard Chlorine, pursuant to section 114 of the CAA, 42 U.S.C. 7414, which authorizes EPA to require disclosure of information to permit it to determine compliance with the CAA. Standard Chlorine responded by letter dated May 17, 1996.

REGULATORY AND STATUTORY FRAMEWORK

17. Pursuant to Section 112 of the CAA, 42 U.S.C. 7412, EPA promulgated the

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National Emission Standards for Hazardous Air Pollutants ("NESHAPS"), codified at 40 C.F.R. Subpart 61. The NESHAPS requirements at issue in this matter became effective on October 24, 1994, pursuant to 40 C.F.R. Part 63, Subpart F, Table 1 and § 63.100(k)(3)(i).

18. Pursuant to Section 112(i)(3)(A) of the CAA, 42 U.S.C. § 7412(i)(3)(A), after the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation.

19. Pursuant to 40 C.F.R. § 61.05, ninety days after the effective date of any standard, no owner or operator shall operate any existing source subject to that standard in violation of the standard.

20. Pursuant to 40 C.F.R. § 61.112, each owner or operator of pumps, compressors, pressure relief devices, sampling connections, systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems required by 40 C.F.R. Subpart J, that are intended to operate in benzene service subject to the provisions of subpart J, shall comply with 40 C.F.R. Subpart V.

21. Section 113(a) of the CAA, 42 U.S.C. § 7413(a), authorizes the Administrator, upon a finding that any person is in violation of any requirement of prohibition of Subchapter I of the CAA, (including Section 112(a)(3)(A), 42 U.S.C. § 7412(i)(3)(A)), including but not limited to, a requirement or prohibition of any rule, promulgated, issued or approved under

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the CAA (including 40 C.F.R. Part 61, Subparts A, J and V), to bring a civil action in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

22. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), also authorizes the Administrator to commence a civil action to assess a civil penalty of not more than \$25,000 per day for each violation.

FIRST CLAIM

23. Paragraphs 1 through 22 are realleged and incorporated by reference as if fully set forth below.

24. On April 10, 1996, Standard Chlorine failed to equip at least eleven (11) open-ended valves or lines with a cap, blind flange, plug or second valve, in violation of 40 C.F.R. § 63.167(a)(1). In its May 17, 1996 response to EPA's request for information, Standard Chlorine admitted that it "has not been effective in ensuring the timely and complete replacement of all caps/plugs."

25. Standard Chlorine is liable for both the imposition of injunctive relief and the assessment of civil penalties of not more than \$25,000 per day for each violation.

SECOND CLAIM

26. Paragraphs 1 through 25 are realleged and incorporated by reference as if fully set forth below.

27. Standard Chlorine failed to create and maintain records documenting that it had

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calibrated leak detection instruments before use on each day of use, in violation of 40 C.F.R. § 63.180(b)(3) and § 63.181, from October 24, 1994 until at least May 17, 1996.

28. Standard Chlorine is liable for both the imposition of injunctive relief and the assessment of civil penalties of not more than \$25,000 per day for each violation.

THIRD CLAIM

29. Paragraphs 1 through 28 are realleged and incorporated by reference as if fully set forth below.

30. Pursuant to 40 C.F.R. § 63.174(b)(1) and 40 C.F.R. § 63.181(b)(1)(ii), Standard Chlorine was required to establish a schedule for monitoring all "connectors" between pipe lines, as that term is defined in 40 C.F.R. § 63.161, no later than October 24, 1995.

31. Standard Chlorine failed to establish a schedule for monitoring leaks in connectors as required, in violation of 40 C.F.R. § 63.174(b)(1) and 40 C.F.R. § 63.181(b)(1)(ii), from October 25, 1995 until at least May 17, 1996. In its May 17, 1996 response to EPA's information request, Standard Chlorine admitted that "[n]o schedules were maintained for the initial monitoring of the connectors. A schedule for subsequent monitoring based on specific units is being developed."

32. Standard Chlorine is liable for both the imposition of injunctive relief and the assessment of civil penalties of not more than \$25,000 per day for each violation.

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FOURTH CLAIM

33. Paragraphs 1 through 32 are realleged and incorporated by reference as if fully set forth below.

34. Standard Chlorine failed to record and maintain for two years information regarding leak detection and repairs, in violation of 40 C.F.R. § 63.181(d), from at least April 30, 1995 until present.

35. Standard Chlorine is liable for both the imposition of injunctive relief and the assessment of civil penalties of not more than \$25,000 per day for each violation.

FIFTH CLAIM

36. Effective on August 8, 1995, certain leak repair requirements apply to industrial process refrigeration equipment that normally contains more than fifty pounds of refrigerant, pursuant to 40 C.F.R. 82.156(i)(2) and Part 82, Subpart F. Specifically, leaks in such equipment must be repaired if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period. Section 82.156(i)(3) further requires that when a repair is conducted without an industrial process shutdown or system "mothballing", an initial verification test shall be conducted at the conclusion of the repair efforts and a follow-up verification test shall be conducted within 30 days of the initial verification test.

37. Standard Chlorine maintains four refrigeration units subject to these leak repair

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** removed refug. sales count!*

verification requirements. Two of these units ~~led~~^{led} in excess of the rate specified in the regulation and and were repaired during February and March of 1996 without an industrial process shutdown or system "mothballing," as follows:

- 1) Carrier Sanvik Belt repair dated 2/11/96.
- 2) Carrier Sanvik Belt repair dated 2/14/96.
- 3) Carrier Sanvik Belt repair dated 2/28/96.
- 4) Carrier Sanvik Belt repair dated 3/06/96.
- 5) Carrier Sanvik Belt repair dated 3/13/96.
- 6) TCI Lab repair dated 5/06/96.

38. Standard Chlorine failed to perform either the initial verification tests or the follow-up verification tests after each of these repairs in violation of 40 C.F.R. § 82.156(i)³(2).

39. Standard Chlorine is liable for both the imposition of injunctive relief and the assessment of civil penalties of not more than \$25,000 per day for each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that the Court:

1. Order Standard Chlorine to pay to the United States a civil penalty not to exceed \$25,000 per day of violation for each violation of 40 C.F.R. Subpart 61 and ⁸²42 U.S.C. § 7412.

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2. Enjoin Standard Chlorine from further violations of the leak detection and repair requirements and the record-keeping requirements of the Clean Air Act.
3. Award the United States the costs and disbursements of this action; and
4. Grant the United States such further relief as the Court may deem just and proper.

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