

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

_____)	
UNITED STATES OF AMERICA)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	
)	
BARTON SOLVENTS, INC.)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General, through its undersigned attorneys, and at the request of the Administrator of the United States Environmental Protection Agency (EPA), hereby files this Complaint and alleges the following:

I. PRELIMINARY STATEMENT

1. This is a civil action brought pursuant to Section 113(b)(2) of the Clean Air Act (CAA), 42 U.S.C. § 7413(b)(2); Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §11045; Section 311(b)(7)(C)of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(7)(C); and Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, against Defendant, Barton Solvents, Inc. (Defendant or Barton) with respect to its solvent blending, storage, and distribution facilities located in Council Bluffs, Iowa; Kansas City, Kansas; Valley Center, Kansas; Bettendorf, Iowa; and Des Moines, Iowa.

II. JURISDICTION, VENUE AND AUTHORITY

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); Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(c)(4); Section 311 (b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n); Section 3008(a)(1) and (g) of RCRA, 42 U.S.C. § 6928(a)(1) and (g); and 28 U.S.C. §§ 1331, 1345 and 1355. The Court has personal jurisdiction over the Parties.

3. Venue is proper in this judicial district pursuant to Section 113(b) of the CAA, 42 U.S.C. §§ 7413(b); Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3); Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E); Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a); and 28 U.S.C. §§ 1391(b) and (c), 1395(a) because Defendant's headquarters is located in this judicial district and some of the violations alleged occurred within this district, at Defendant's Facilities in Des Moines, Council Bluffs and Bettendorf, Iowa.

4. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 305 of the CAA, 42 U.S.C. § 7605; Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4); Section 506 of the CWA, 33 U.S.C. § 1366; Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and 28 U.S.C. §§ 516 and 519.

5. Notice of commencement of this action has been given to the State of Kansas as required by 42 U.S.C. § 6928(a)(2).

III. PARTIES

6. Plaintiff is the United States of America, acting at the request of the United States Environmental Protection Agency, an agency of the United States.

7. Defendant is a corporation organized under the laws of the State of Iowa, and has various business operations, including its company headquarters, in this judicial district.

8. Defendant is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e); Section 329(7) of EPCRA, 42 U.S.C. § 11049(7); Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7); Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and KSA 65-3430.

IV. STATUTORY AND REGULATORY FRAMEWORK

A. The Clean Air Act

9. In 1990, Congress added Section 112(r) to the Clean Air Act, *see* Pub. L. 101-549 (Nov. 15, 1990) (42 U.S.C. § 9412), in response to a 1984 catastrophic release of an extremely hazardous substance in Bhopal, India that killed more than 3,400 people, caused over 200,000 to suffer injuries, and caused damage to crops and livestock. S. Rep. No. 101-228 (Dec. 20, 1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3519.

10. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), is designed to prevent and minimize the consequences of accidental releases of substances that may cause death, injury, or property damage.

11. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), includes a "general duty clause" that places the responsibility to design and maintain a safe facility (one free of accidents, but equipped for release mitigation and community protection should a release occur) on the owner or operator of the facility. Section 112(r)(1) applies to owners and operators of stationary sources producing, processing, handling, or storing specific hazardous substances. In pertinent part, Section 112(r)(1) provides:

It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as Section 654 of Title 29 [29 U.S.C. § 654] to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such

steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

42 U.S.C. § 7412(r) (hereinafter the General Duty Clause).

12. An “extremely hazardous substance” (EHS) is any chemical which may, as a result of short-term exposures because of releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity. S. Rep. No. 228, 101st Cong., 1st Sess. 211 (1989). EHSs include, but are not limited to, substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals on the list of EHSs published under Section 302 of EPCRA, 42 U.S.C. § 11002, at 40 C.F.R. Part 355, Appendices A and B.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines a “stationary source” as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, are located on one or more contiguous properties, are under the control of the same person, and from which an accidental release may occur.

14. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, the owner or operator of a major stationary source, or any other person who violates any requirement or prohibition of Subchapter I of the CAA (42 U.S.C. §§ 7401-7515), including the General Duty Clause of Section 112(r)(1) shall be liable for injunctive relief and a civil penalty of up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

B. Emergency Planning and Community Right-to-Know Act

15. EPCRA was enacted on October 17, 1986 as Title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 (1986), (codified at 42 U.S.C. §§ 11001-11050).

16. The purpose of EPCRA is to provide communities with information on potential chemical hazards within their boundaries and to foster state and local emergency planning efforts to control any accidental releases. 51 Fed. Reg. 41,570 (1986).

17. To achieve this end, Section 304 of EPCRA, 42 U.S.C. § 11004 and the regulations set forth at 40 C.F.R. § 355.40, require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored to notify certain government authorities when there is a release equal to or greater than the reportable quantity (RQ) of any EPCRA Extremely Hazardous Substance (EHS) or hazardous substances listed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Specifically, Section 304(b) of EPCRA requires that the owner and operator immediately notify the State Emergency Response Commission (SERC) of any State likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committee (LEPC) for any area likely to be affected by the release. Additionally, Section 304(c) requires the owner and operator to submit to the SERC and LEPC, as soon as practicable, a written emergency follow-up notice updating the information required under Section 304(b).

18. Pursuant to Section 325(b)(3) of EPCRA, 42 U.S.C. § 1100 and 40 C.F.R. § 19.4, any person who violates a reporting requirement of Section 304 of EPCRA shall be liable for a civil penalty of up to \$32,500 per day for each violation that occurred after March 15, 2004 and through January 12, 2009, and \$37,500 per day for each violation that occurred after January 12, 2009.

C. The Clean Water Act

19. The Clean Water Act is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

20. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), authorizes EPA to promulgate regulations establishing methods, procedures, and equipment to prevent discharges of oil from onshore facilities and contain such discharges when they do occur. EPA has promulgated such regulations which are known as Spill Prevention Control and Countermeasure regulations (SPCC Regulations) and are codified at 40 C.F.R. Part 112.

21. The SPCC Regulations apply to owners and operators of onshore facilities engaged in storing or distributing oil or oil products with an above ground storage capacity greater than 1,320 gallons from which a discharge of oil could reasonably be expected to discharge oil into or upon navigable waters of the United States or adjoining shorelines. *See* 40 C.F.R. § 112.

22. Owners and operators of facilities subject to the SPCC Regulations must prepare and implement a plan (SPCC Plan) that adheres to certain requirements detailed in the regulations. *See* 40 C.F.R. § 112 et seq. These requirements include:

a. Owners and operators of a facility must amend the SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. An amendment made under this Section must be prepared within six months and implemented as soon as possible, but not later than six months following preparation of the amendment. 40 C.F.R. § 112.5(a).

b. Owners and operators of a facility must review and evaluate its SPCC Plan every five years and, as a result of the review and evaluation, amend its SPCC Plan within six months of the review to include more effective prevention and control technology if the

technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge. This review must be documented and include a signed statement as to whether the Plan will be amended. 40 C.F.R. § 112.5(b).

c. A Professional Engineer must review and certify any technical amendments to the SPCC Plan. 40 C.F.R. § 112.5(c).

d. The SPCC Plan must discuss Facility conformance with the requirements of 40 C.F.R. Part 112 including but not limited to requirements pertaining to containment systems (40 C.F.R. § 112.7(h)(1) and 112.8(c) (2)), correction of discharges (40 C.F.R. § 112.8(c)(10)), location of mobile or portable storage containers (40 C.F.R. § 112.8(c)(11)) and design of pipe supports (40 C.F.R. § 112.8(d)(3)). 40 C.F.R. § 112.7(a)(1).

23. The SPCC Regulations require owners and operators of facilities to take certain measures designed to prevent and contain spills. Among other things, owners and operators are required to construct all bulk storage installations to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation requiring that dikes, berms, or retaining walls must be sufficiently impervious to oil. 40 C.F.R. § 112.8(c)(2).

24. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C) and 40 C.F.R. § 19.4, any person who fails to comply with any regulation issued under Section 311(j) of the CWA shall be subject to a civil penalty in an amount up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

D. The Resource Conservation and Recovery Act

25. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976 to amend the Solid Waste Disposal Act (SWDA) and on the Hazardous and

Solid Waste Amendments (HSWA), which further amended the SWDA in 1984 (collectively RCRA). RCRA establishes a "cradle-to-grave" program for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. *See* 42 U.S.C. § 6901 et seq.

26. Pursuant to its authority under Sections 3001 and 3002 RCRA, 42 U.S.C. §§ 6921-22, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 279 applicable to, *inter alia*, facilities that generate and store hazardous wastes which imposed detailed requirements on such facilities.

27. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer a state hazardous waste program in lieu of the federal RCRA program when it deems the state program to be equivalent to the federal program.

28. EPA has granted final authorization to the State of Kansas, Kansas Department of Health and the Environment (KDHE) to administer its hazardous waste program in lieu of the federal program. *See* 50 Fed. Reg. 40377 (October 3, 1985). KDHE has promulgated regulations that incorporate by reference many of the federal RCRA regulations and impose additional requirements. *See* Kansas Administrative Regulations (KAR) 28-31 et seq.

29. 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-authorized KDHE hazardous waste program, as well as the federal regulations that remain effective in Kansas.

30. EPA has not approved the State of Iowa to administer a state hazardous waste program in lieu of the federal program and, therefore, only federal RCRA regulations, codified at 40 C.F.R. Parts 260-279, apply in the State of Iowa.

31. Federal regulations, as well as the federally-authorized KDHE regulations, impose detailed requirements on the storage and handling of hazardous waste and universal waste including the following requirements:

a. all generators of hazardous wastes must determine whether generated solid wastes are hazardous using specified methods (Hazardous Waste Determinations). 40 C.F.R. § 262.11; KAR 28-31-262 (formerly 28-31-4(b)). Federally-authorized KDHE regulations further require that such determination be made by submitting the waste for testing to a laboratory certified by KDHE. KAR 28-31-262(c)(2) (formerly KAR 28-31-4(b)(3)(A)).

b. facility must provide notice to land disposal facilities receiving waste of specified information about wastes (Notice Requirements). 40 C.F.R. 268.7(a)(4)(2); KAR-28-268 (formerly KAR 28-31-14) (requiring compliance with 40 C.F.R. 268.7(a)(4)(2)).

c. facilities cannot store hazardous waste without a Permit or equivalent "Interim Status" except that a generator of hazardous wastes may accumulate hazardous waste for up to 90 days without obtaining a RCRA Permit or Interim Status if it adheres to strict regulatory requirements relating to (1) the storage of hazardous wastes (Storage Requirements); (2) emergency response procedures (Emergency Response Requirements), and (3) the training of personnel handling the hazardous wastes (Training Requirements). Any generator that either fails to comply with any one of the above-listed Storage, Emergency Response and Training Requirements, or exceeds the 90-day accumulation period, is considered to be an operator of a storage facility and must have either a RCRA Permit or Interim Status. *See* 42 U.S.C. § 6925; 40 C.F.R. § 262.34; KSA 65-3437; KAR 28-31-265 (formerly KAR 28-31-4(g)). Under both federal and federally-authorized KDHE regulations, the Storage, Emergency Response and Training Requirements include:

i. Storage Requirements.

(a) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. 40 C.F.R. 265.177(c); KAR 28-31-265 (formerly KAR 28-31-4(g)(1)(A)) and 40 C.F.R. 262.34(a)(1)(i) (requiring compliance with 40 C.F.R. 265.177).

(b) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. 40 C.F.R. 265.173(a); KAR 28-31-265 (formerly KAR 28-31-4(g)(1)(A)) and 40 C.F.R. 262.34(a)(1)(i) (requiring compliance with 40 C.F.R. 265.173(a)).

(c) Hazardous waste must be labeled either with the words “Hazardous Waste” or with other words that identify the contents of the containers. 40 C.F.R. 262.34(c)(1)(ii).

(d) The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container. 40 C.F.R. 262.34 (a)(2).

(e) At least weekly, the owner or operator must inspect areas where containers are stored. 40 C.F.R. 265.174; KAR 28-31-265 (formerly KAR 28-31-4(g)(1)(A)) and 40 C.F.R. 262.34(a)(1)(i) (requiring compliance with 40 C.F.R. 265.174).

(f) If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this Part. 40 C.F.R. 265.171; KAR 28-31-265 (formerly

KAR 28-31-4(g)(1)(A)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.35).

(g) There must be sufficient aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes. 40 C.F.R. § 265.35; KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.35).

ii. Emergency Response Requirements.

(a) “At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility’s contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.” 40 C.F.R. 265.55; KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.55).

(b) The facility must have a Contingency Plan that describes actions facility will take to comply with 40 C.F.R. §§ 265.51 and 265.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility. 40 C.F.R. 265.52(a); 40 C.F.R. 262.34(a)(4) and KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) (requiring compliance with 40 C.F.R. 265.52(a)).

(c) The facility Contingency Plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This Plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires). 40 C.F.R. 265.52(f); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.52(f)).

(d) The facility Contingency Plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the Plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities. 40 C.F.R. 265.52(e); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.52(e)).

(e) All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency. 40 C.F.R. 265.33; KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.33).

(f) The facility Contingency Plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see 40 C.F.R. §265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. 40 C.F.R. 265.52(d); KAR 28-31-

265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.52(d)).

(g) The generator must attempt to make arrangements with local police, fire departments, emergency response teams, and hospitals to familiarize them with the facility and hazardous waste handled there and designate primary responders or document the refusal of state or local authorities to enter into such arrangements. 40 C.F.R. 265.37; 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.37).

(h) Copies of the Contingency Plan and updates must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. 40 C.F.R. 265.53(b); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.53(b)).

iii. Training Requirements.

(a) The facility must have a training program designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with “emergency procedures, emergency equipment, and emergency systems, including where applicable: (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (ii) Key parameters for automatic waste feed cut-off systems; (iii) Communications or alarm systems; (iv) Response to fires or explosions; (v) Response to ground-water contamination incidents; and (vi) Shutdown of operations.” 40 C.F.R. 265.16(a)(3); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(a)).

(b) Facility must maintain training records that document “The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.” 40 C.F.R. 265.16(d)(1); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4)(requiring compliance with 40 C.F.R. 265.16(d)(1)).

(c) Facility must maintain a written job description for each position listed under paragraph (d)(1) of 40 C.F.R. §265.16 (positions related to hazardous waste management). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position. 40 C.F.R. 265.16(d)(2); 40 C.F.R. 262.34(a)(4) and KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) (requiring compliance with 40 C.F.R. 265.16(d)(2)).

(d) Facility must maintain training records including description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of 40 C.F.R. 265.16. 40 C.F.R. 265.16(d)(3); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(d)(3)).

(e) Facility must maintain records that document that the training or job experience required under 40 C.F.R. § 265.16 (a), (b), and (c), has been given to, and completed by, facility personnel. 40 C.F.R. 265.16(d)(4); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(d)(4)).

d. Federal regulations also impose certain requirements for storage of universal waste (Universal Waste Requirements) including the following:

i. “A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.” 40 C.F.R. 273.13(d)(1).

ii. “A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.” 40 C.F.R. 273.15(c).

iii. “Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”” 40 C.F.R. 273.14(e).

32. Pursuant to Section 3008 (g) of RCRA, 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4, any person who violates any requirement of Subchapter II of RCRA, regulations promulgated thereunder or federally approved state hazardous waste regulations, shall be liable for a civil penalty of up \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

33. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), any person who violates any requirement of Subchapter II of RCRA, the regulations promulgated thereunder or federally-authorized state hazardous waste regulations, may be liable for appropriate relief including a temporary or permanent injunction.

V. DEFENDANT’S FACILITIES

34. At times relevant to this action, Defendant has been and continues to be the “owner and operator” of the following facilities (collectively, Barton Facilities) which are the

subject of this action within the meanings of Section 112(1)(9) of CAA, 42 U.S.C. § 7412(a)(9); Section 304 of EPCRA, 42 U.S.C. § 11004; Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2; 40 C.F.R. §§ 260-279; and KAR 28-31-260 (formerly KAR 28-31-4).

Valley Center, Kansas Facility (VC Facility)
201 South Cedar,
Valley Center, KS 67147

Kansas City, Kansas Facility (KC Facility)
901 S. 66th Terrace
Kansas City, KS 66111

Des Moines, Iowa Facility (DM Facility)
1970 NE Broadway
Des Moines, IA 50313

Bettendorf, Iowa Facility (Bettendorf Facility)
201 36th Street
Bettendorf, IA 52722

Council Bluffs, Iowa Facility (CB Facility)
2135 9th Avenue
Council Bluffs, Iowa 51501

35. At all times relevant to this action, each of the Barton Facilities was a “stationary source” within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

36. At all times relevant to this action, each of the Barton Facilities was a “Facility” within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

37. At all times relevant to this action, the DM and VC Facilities each produced, processed, handled, stored, and disposed of hazardous substances listed under Section 112(r)(3) of the CAA. 42 U.S.C. § 7412(r)(3).

38. At all times relevant to this action, the VC Facility produced, used, and stored EHS and “hazardous chemicals” as defined in Section 329(3) and (5) of EPCRA, 42 U.S.C.

§ 11049(5), and “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

39. At all times relevant to this action, the Defendant and its DM, CB, KCK, and Bettendorf Facilities has each been subject to the SPCC Regulations codified at 40 C.F.R. § 112 because each is a “non-transportation related” “onshore facility” that came into operation before August 16, 2002 which is engaged in storing and distributing oil or oil products and has an above-ground storage capacity greater than 1,320 gallons. A discharge from each of these facilities could occur in harmful quantities and could reasonably be expected to discharge oil into or upon navigable waters of the United States or adjoining shorelines.

40. At all times relevant to this action, the Defendant and the VC, KCK, and CB Facilities has each been a “generator,” “large quantity generator” and “EPA Generator” of “hazardous waste” and a “storage” facility for “hazardous waste” within the meanings of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. § 261; and K.S.A. 65-3430 (formerly KAR 28-31-2(c)).

41. At all times relevant to this action, the VC, KCK, and CB Facilities has each accumulated hazardous waste on site without a Permit and without Interim Status.

42. At all times relevant to this action, the Defendant and the CB Facility has been a “small quantity universal waste handler” within the meaning of 40 C.F.R. § 273.9.

VI. FACTUAL ALLEGATIONS

A. Factual Allegations Pertaining to CAA Claims

43. On July 17, 2007, a series of fires and explosions occurred at the VC Facility. The cause of the incident was a static charge that ignited Special Naphtholite 66/3 (VM&P), an EHS listed under Section 112(r)(3) of the CAA, while it was being unloaded from a tractor trailer into an above ground storage tank. The initial explosion of this EHS led to further fire and

explosions of multiple above ground storage tanks. Debris from exploding tanks was launched through the air causing extensive damage to the VC Facility, as well as to nearby office buildings and a residential trailer. The fire and explosions also caused the release of several hazardous substances and EHSs stored in the tanks including xylene, ethyl benzene, methanol, acetone, toluene, and methyl isobutyl ketone. These releases continued to fuel the fire and ultimately impacted the soil, water, and air of the VC Facility and neighboring properties. Run-off containing these substances and fire suppressants from the VC Facility reached a sanitary sewer drain and was later detected in the sludge at the wastewater treatment plant's aeration basin.

44. The fire and explosions at the VC Facility described in Paragraph 43 above were investigated by the Kansas State Fire Marshall (KSFM). KSFM issued a report on the incident dated July 17, 2007. The Report concluded that several factors may have contributed to the incident including: (1) the type of material being pumped and outside temperature above the flashpoint of that material; (2) the lack of anti-static additives in the filling process; (3) the likelihood that there was no bonding/grounding between the trailer and the storage tank; (4) the low tank level in the tank when the operation started which cause agitation for the liquid that generated static; (5) air being introduced into the line during the VM&P transfer; and (6) the high velocity at which the material was pumped. KSFM Report (7/17/07) at 52-53.

45. In addition, the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) found that Defendant had failed to test and inspect the pressure relieving and atmospheric vents on the tanks to ensure their proper operation in violation of 29 C.F.R. § 1903.19(c)(2). On January 18, 2008, Defendant entered into an agreement with OSHA settling an administrative claim for this violation in which it paid a penalty of \$3,500.

46. The practices, acts, and omissions at the VC Facility described in Paragraphs 43-45 above were not in conformance with applicable industry codes, standards, and practices, including but not limited to, *Electrostatic Ignitions of Fires and Explosions* by Pratt, 2000 edition *Flammable and Combustible Liquids and Their Vapors* (NFPA 77), National Fire Protection Association, *Flammable, and Combustible Liquids Code 30*, 2003 edition (NFPA 30); American Solvents Council, *Working with Modern Hydrocarbon and Oxygenated Solvents: A Guide To Flammability*, September 2004 edition (ASC 2003); American Petroleum Institute Standard 2003, *Protection Against Ignitions Arising Out of Static, Lighting, and Stray Currents*, 6th ed. 1998 (API 2003).

47. Information collected during the investigation of the VC Facility incident described in Paragraphs 43 - 45 revealed that Defendant had failed to conduct an adequate process hazard analysis on the transfer of VM&P at the VC Facility, failed to design and maintain the VC Facility in a manner that adequately took into account the volatile nature of the materials used there and the potential for the generation and ignition of static electricity in the VM&P transfer process, and failed to minimize the consequences of accidental releases of hazardous substances and extremely hazardous substances by having an adequate emergency pressure relief vents and containment for chemical spills.

48. On October 29, 2007, a fire and explosion occurred at the DM Facility while ethyl acetate, an EHS listed under Section 112(r)(3) of the CAA, was being pumped from a 30,000 gallon tank at the tank farm into a 350 gallon, stainless steel intermediate bulk container (IBC). The movement of the liquid through piping and hose into the IBC at an elevated velocity generated a static electric charge that caused the IBC to burst into flames which caused a series of explosions and fires in the packaging/filling area. The fire spread into and throughout a

warehouse where it ignited other chemicals stored there. The ignition of these additional chemicals and solvents fueled the initial fire, and resulted in a huge fire that burned for several hours causing extensive damage to the facility. Minor injuries were sustained by a Barton employee and two firefighters. The DM Facility and nearby businesses were evacuated. The fire caused substantial property damage to the DM Facility as well as a neighboring property.

49. The Iowa Occupational Safety and Health Administration (IOSHA), the State Fire Marshal Division, and McKinzie Environmental (on behalf of EPA) conducted incident investigations of the DM Facility explosions. These investigations concluded that the incident resulted from ignition of a static discharge that was caused by a combination of (1) splash filling of ethyl acetate (whereby the ethyl acetate was filled from the top of the IBC and allowed to splash into the bottom); (2) improper bonding/grounding of the non-metal fill hose nozzle to the IBC in which it was inserted; and (3) a too rapid fill velocity. IOSHA Inspection Report (12/6/07) at 5; McKinzie Report (5/28/08) at 32-33; State of Iowa Fire Marshall Report (12/3/07) at 6-7).

50. In addition, the IOSHA found that the DM Facility failed to dispense the ethyl acetate into containers where the nozzle and container were electrically interconnected as required by IAC 875-Chapter 10 1910.106(f)(3)(iv). On January 8, 2008, Defendant entered into an agreement with IOSHA settling a state administrative claim for this violation in which it paid a penalty of \$3,500.

51. With respect to the explosions at the DM Facility, the IOSHA Inspection Report noted that there was not a sprinkler system or fire suppression system in the packaging/filling area where the fire and explosions originated. The DM Facility Plan also indicated that there were no hazard control system features in the packaging/filling area. A portable fire extinguisher

was available in the packaging/filling area, but it was quickly used by a Barton employee and was ineffective in stopping the spreading of the fire. The McKenzie Report also noted that the on-site water supply at the facility was also inadequate for the desired suppression streams.

52. The practices, acts, and omissions described in Paragraphs 48 - 51 above were not in conformance with applicable industry standards, practices, and codes including but not limited to NFPA 30, NFPA 77, API 2003, and Thomas H. Pratt, *Electrostatic Ignitions of Fires and Explosions* (1997).

53. Information collected during the investigation of the incident at the DM Facility described in Paragraphs 48 - 51 above revealed that Defendant had failed to conduct an adequate process hazard analysis on the transfer of ethyl acetate at the DM Facility, failed to design and maintain the DM Facility in a manner that adequately took into account the volatile nature of the materials used there and the potential for the generation and ignition of static electricity in the liquid transfer process, and failed to minimize the consequences of accidental releases of hazardous substances and EHSs by having an adequate hazard control and fire suppression system and firefighting capabilities including water supply.

54. Each of the incidents described in Paragraphs 43 - 53 resulted in the “accidental release” of an EHS and other hazardous substances listed under Section 112(r)(3) of the CAA, within the meaning of Section 112(r)(1) of the CAA. 42 U.S.C. § 7412(r).

B. Factual Allegations Pertaining to EPCRA Claims

55. The explosions that occurred at the VC Facility on or about July 17, 2007, resulted in the releases of hazardous chemicals, hazardous substances, and/or EHSs in amounts equal or greater than the Reportable Quantities designated by EPA under Section 302 of EPCRA, 42 U.S.C. § 11002. These releases include but are not limited to 87,000-112,000 lbs of xylene, 12,400-37,373 lbs of ethyl benzene, 43,000 lbs of methanol, 9,400 lbs of acetone, 7,000-8,000

lbs of toluene, and over 5,000 lbs of methyl isobutyl ketone were released during the VC Facility incident described in Paragraphs 43 - 47 above. 40 C.F.R. 302.4.

56. Following the releases of the hazardous substances and EHSs described in Paragraphs 43 - 47 above, Defendant failed to provide immediate notice to the Kansas SERC which was at the time the Kansas Emergency Management Department.

57. Following the releases described in Paragraphs 43 - 44 above, Defendant failed to submit to the Kansas SERC and Sedgwick County LEPC, as soon as practicable, a written emergency follow-up notice updating the information required by Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and regulations at 40 C.F.R. 355.43(b).

C. Factual Allegations Pertaining to CWA Claims

58. On May 23, 2011, EPA sent Defendant an information request pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, concerning Defendant's compliance with Section 311(j) of the CWA and the regulations promulgated thereunder at 40 C.F.R. § 112.

59. Defendant responded to the information request described in the foregoing paragraph on June 24, 2011. In its response, Defendant indicated that the Bettendorf Facility, CB Facility, and KCK Facility is each a "non-transportation related" "onshore facility" that came into operation before August 16, 2002, which is engaged in storing and distributing oil or oil products in an above-ground storage capacity greater than 1,320 gallons and that a discharge from any of these facilities could occur in harmful quantities and could reasonably be expected to discharge oil into or upon navigable waters of the United States or adjoining shorelines.

60. From 2011 to the present, Defendant has provided EPA with copies of its SPCC Plans and other information relevant to its compliance with SPCC requirements.

61. EPA has reviewed the SPCC Plans and other information provided by Defendant and determined that Defendant has violated or is in violation of numerous SPCC requirements at

the Bettendorf, CB, DM, and KCK facilities, and which are set forth in Tables 1.A, 1.B, 1.C, and 1.D, respectively attached hereto and hereby incorporated by reference herein.

D. Factual Allegations Pertaining to RCRA Claims

62. On March 23, 2010, an EPA contractor conducted a RCRA inspection of the CB Facility. At the conclusion of this inspection, the contractor provided Defendant with a Notice of Preliminary Findings which identified RCRA violations discovered during the inspection. The results of the inspection were documented in an inspection report dated April 23, 2010, which was provided to Defendant June 22, 2010.

63. EPA conducted a follow-up RCRA inspection of the CB Facility on December 8 and 9, 2010. At the conclusion of the December 2010 inspection the EPA inspector gave Defendant a list of RCRA violations discovered during the inspection. The results of the inspection were documented in an inspection report dated January 25, 2011, which was provided to Defendant on February 8, 2011.

64. On March 11, 2011, EPA issued Defendant a request for information pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. The request listed all of the RCRA violations discovered in the course of the March 2010 and December 2010 inspections of the CB Facility as well as additional violations determined after reviewing documents collected during the inspections. EPA requested that Defendant review the listed violations and provide various information concerning the violations to EPA. Defendant responded to this request on May 11, 2011.

65. From 2011 to the present, Defendant has provided EPA with additional information concerning RCRA compliance at the CB Facility.

66. EPA has reviewed the inspection reports and other information provided by Defendant and has determined that Defendant's CB Facility has been in violation of numerous

federal RCRA requirements which are set forth in Table 2.A attached hereto and hereby incorporated herein by reference.

67. EPA conducted a RCRA inspection of the VC Facility on November 2 and 3, 2010. At the conclusion of the inspection, the inspector gave Defendant a list of RCRA violations discovered during the inspection. The results of the inspection were documented in an inspection report dated November 29, 2010, which was provided to Defendant on December 7, 2010.

68. On March 14, 2011, EPA issued Defendant a request for information pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. The request listed all RCRA violations discovered at the VC Facility in the November 2010 inspection, as well as additional violations determined after reviewing documents collected during the inspections. EPA requested that Defendant review the listed violations and provide various information concerning the violations to EPA. Defendant responded to this request on May 16, 2011.

69. From 2011 to the present, Defendant has provided EPA with additional information concerning RCRA compliance at the VC Facility.

70. EPA has reviewed the inspection reports and other information provided by Defendant and has determined that Defendant's VC Facility violated numerous federal and federally-authorized Kansas RCRA requirements as set forth in Table 2.B attached hereto and hereby incorporated herein by reference.

71. From May 4 to 6, 2011, EPA conducted a RCRA inspection of the KCK Facility. At the conclusion of this inspection, the inspector gave Defendant a list of RCRA violations discovered during the inspection. The results of the inspection were documented in an inspection report dated June 9, 2011, which was provided to Defendant on July 8, 2011.

72. On July 27, 2012, EPA issued Defendant a request for information pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. The request listed all RCRA violations at the KCK Facility in the May 2011 inspection, as well as additional violations determined after reviewing documents collected during the inspections. EPA requested that Defendant review the listed violations and provide various information concerning the violations to EPA. Defendant responded to this request on August 27, 2013.

73. From 2011 to the present, Defendant has provided EPA with additional information concerning RCRA compliance at the KCK Facility.

74. EPA has reviewed the inspection reports and other information provided by Defendant and has determined that Defendant's KCK Facility is in violation of numerous federal and federally-authorized Kansas RCRA Requirements as set forth in Table 2.C attached hereto and hereby incorporated herein by reference.

FIRST CLAIM FOR RELIEF
(Failure to Assess Hazards of the VM&P Transfer Process at the VC Facility in Violation of Section 112(r)(1) of the CAA)

75. Paragraphs 1 through 74 are incorporated herein by reference.

76. Pursuant to Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), Defendant was required "to identify hazards which may result from [accidental] releases [of listed hazardous substances] using appropriate hazard assessment techniques"

77. Beginning in or before July of 2007, Defendant failed to adequately identify, through the use of appropriate hazard assessment techniques, the hazards associated the transfer of VM&P, a hazardous substance listed under Section 112(r)(3) of the CAA, at the VC Facility including but not limited to the potential for fast pumping of VM&P to generate static electricity while the chemical was being moved into the tank above its flashpoint, and the potential for

ignition of such static due to the addition of air in the tank, lack of adequate bonding, and a low tank level.

78. Feasible means existed by which Defendant could have eliminated or reduced hazards associated with the transfer of VM&P at the VC Facility, including but not limited to, by conducting an appropriate hazard assessment, following the recognized and generally accepted good engineering practices associated with static electricity and flammable/combustible liquids.

79. Defendant's failure to identify hazards associated with the transfer of VM&P at the VC Facility using appropriate hazard assessment techniques constitutes a violation of the General Duty Clause of Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1).

80. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 40 C.F.R. § 19.4, Defendant is liable for a civil penalty of up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

SECOND CLAIM FOR RELIEF
(Failure to Design and Maintain a Safe Facility with respect to the VM&P Transfer Process at the VC Facility in Violation of Section 112(r)(1) of the CAA)

81. Paragraphs 1 through 74 are incorporated herein by reference.

82. Pursuant to Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), Defendant was required to "design and maintain a safe facility taking such steps as are necessary to prevent releases [of listed hazardous substances]. . . ."

83. Beginning in or before July of 2007, Defendant failed to design and maintain a safe facility at the VC Facility with respect to the transfer of VM&P, a hazardous substance listed under Section 112(r)(3) of the CAA, by taking such steps as necessary to prevent accidental releases of listed hazardous substances in the following respects: (a) it failed to

control the generation of static electricity; (b) it failed to have sufficient bonding/grounding between the trailer and the storage tank in the VM&P filling process; (c) it permitted filling the storage tank at a high velocity when the liquid in the tank was low; (d) it allowed air to be introduced into the line during the VM&P transfer; and (e) it pumped the VM&P at too high a velocity for the circumstances.

84. Feasible means existed by which Defendant could have designed and maintained a safe facility with respect to the transfer of VM&P at the VC Facility.

85. Defendant's failure to design and maintain a safe facility with respect to the transfer of VM&P at the VC Facility constitutes a violation of the General Duty Clause of Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1).

86. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 40 C.F.R. § 19.4, Defendant is liable for a civil penalty of up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

THIRD CLAIM FOR RELIEF
(Failure to Minimize the Consequences of a Release in the VM&P Transfer Process at the VC Facility in Violation of Section 112(r)(1) of the CAA)

87. Paragraphs 1 through 74 are incorporated herein by reference.

88. Pursuant to Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), Defendant was required "to minimize the consequences of accidental releases [of listed hazardous substances] which do occur."

89. Beginning in or before July of 2007, Defendant failed to minimize the consequences of accidental releases of hazardous substances listed under Section 112(r)(3) of the

CAA associated with the VM&P transfer process at the VC Facility by having insufficient emergency pressure vents on its tanks and inadequate containment for chemical spills.

90. Feasible means existed by which Defendant could have minimized the consequences of an accidental release of hazardous substances listed under Section 112(r)(3) of the CAA associated with the VM&P transfer process at the VC Facility.

91. Each of Defendant's failures to minimize the consequences of accidental releases of hazardous substances listed under Section 112(r)(3) of the CAA associated with the VM&P transfer process at the VC Facility constitutes a violation of the General Duty Clause of Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1).

92. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 40 C.F.R. § 19.4, Defendant is liable for a civil penalty of up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

FOURTH CLAIM FOR RELIEF
(Failure to Assess Hazards Associated with the Handling of Ethyl Acetate at the DM Facility in Violation of Section 112(r)(1) of the CAA)

93. Paragraphs 1 through 74 are incorporated herein by reference.

94. Pursuant to Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), Defendant was required "to identify hazards which may result from [accidental] releases [of listed hazardous substances] using appropriate hazard assessment techniques"

95. Beginning in or before October of 2007, Defendant failed to adequately identify, through the use of appropriate hazard assessment techniques, the hazards associated with the transfer of ethyl acetate at the DM Facility including, but not limited to, the potential for splash

filling to generate static electricity, the risks of using a non-metal fill hose nozzle with metal components, and the process hazards associated with fill velocity.

96. Feasible means existed by which Defendant could have eliminated or reduced hazards associated with the transfer of ethyl acetate at the DM Facility, including but not limited to, by conducting an appropriate hazard assessment.

97. Defendant's failure to identify hazards associated with the transfer of ethyl acetate at the DM Facility using appropriate hazard assessment techniques constitutes a violation of the General Duty Clause of Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1).

98. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 40 C.F.R. § 19.4, Defendant is liable for a civil penalty of up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

99. Subject to a reasonable opportunity for further investigation or discovery, Defendant's failure to identify the hazards associated with the transfer of ethyl acetate at the DM Facility using appropriate hazard assessment techniques continues. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant is liable for injunctive relief for the violations alleged herein.

FIFTH CLAIM FOR RELIEF

(Failure to Design and Maintain a Safe Facility with respect to Handling of Ethyl Acetate at the DM Facility in Violation of Section 112(r)(1) of the CAA)

100. Paragraphs 1 through 74 are incorporated herein by reference.

101. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), Defendant was required "to design and maintain a safe facility taking such steps as are necessary to prevent releases [of listed hazardous substances]"

102. Beginning in or before October of 2007, Defendant failed to design and maintain a safe facility with respect to the transfer of ethyl acetate at the DM Facility by taking such steps as are necessary to prevent accidental releases of hazardous substances in the following respects: (1) it used splash filling of ethyl acetate; (2) it failed to properly bond the non-metal fill hose nozzle to the IBC in which it was inserted; and (3) it used too rapid a fill velocity in transferring ethyl acetate into an IBC.

103. Feasible means existed by which Defendant could have designed and maintained a safe facility with respect to the transfer of ethyl acetate at the DM Facility.

104. Defendant failure to design and maintain a safe facility with respect to the transfer of ethyl acetate at the DM Facility constitutes a violation of the General Duty Clause of Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1).

105. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 40 C.F.R. § 19.4, Defendant is liable for a civil penalty of up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

106. Subject to a reasonable opportunity for further investigation or discovery, Defendant's failure to design and maintain a safe facility with respect to the transfer of ethyl acetate at the DM Facility continues. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant is liable for injunctive relief for the violations alleged herein.

SIXTH CLAIM FOR RELIEF
(Failure to Minimize the Consequences of a Release in the Handling of Ethyl Acetate at the DM Facility in Violation of Section 112(r)(1) of the CAA)

107. Paragraphs 1 through 74 are incorporated herein by reference.

108. Pursuant to Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), Defendant was required “to minimize the consequences of accidental releases [of listed hazardous substances] which do occur.”

109. Beginning in or before October of 2007, Defendant failed to minimize the consequences of accidental releases of hazardous substances listed under Section 112(r)(3) of the CAA associated with the transfer of ethyl acetate at the DM Facility by having adequate hazard control and fire suppression system and equipment.

110. Feasible means existed by which Defendant could have minimized the consequences of an accidental release of hazardous substances associated with the transfer ethyl acetate at the DM Facility.

111. Defendant’s failure to minimize the consequences of accidental releases of hazardous substances associated with the transfer of ethyl acetate at the DM Facility constitutes a violation of the General Duty Clause of Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1).

112. As a result of its failure to minimize the consequences of accidental releases of hazardous substances listed under Section 112(r)(3) of the CAA associated with the transfer of ethyl acetate at the DM Facility, Defendant violated the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1).

113. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 40 C.F.R. § 19.4, Defendant is liable for a civil penalty of up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

114. Subject to a reasonable opportunity for further investigation or discovery, Defendant’s failure to minimize the consequences of accidental releases of hazardous substances

listed under Section 112(r)(3) of the CAA associated with the transfer of ethyl acetate at the DM Facility continues. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant is liable for injunctive relief for the violations alleged herein.

SEVENTH CLAIM FOR RELIEF
(Violations of Section 304 of EPCRA at the VC Facility)

115. Paragraphs 1 through 74 are incorporated herein by reference.

116. The explosions that occurred at the VC Facility on or about July 17, 2007, resulted in the releases of hazardous substances in amounts equal or greater to the Reportable Quantities designated by EPA under Section 302 of EPCRA, 42 U.S.C. § 11002 including but not limited to 87,000-112,000 lbs of xylene, 12,400-37,373 lbs of ethyl benzene, 43,000 lbs of methanol, 9,400 lbs of acetone, 7,000-8,000 lbs of toluene, and over 5,000 lbs of methyl isobutyl ketone.

117. Following the releases of the hazardous substances described in the previous paragraph, Defendant failed to provide immediate notice to the Kansas SERC.

118. Defendant's failure to immediately notify the SERC as described in the preceding paragraph, constitutes a violation of Section 304(b) of EPCRA, 42 U.S.C. § 11004(b) and regulations at 40 C.F.R. 355, Subpart C.

119. Following the releases described in Paragraph 116 above, Defendant failed to submit, as soon as practicable, a written emergency follow-up notice updating the information required by Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and regulations at 40 C.F.R. 355.43(b), to the Kansas SERC and LEPC.

120. Defendant's failure to provide written emergency follow-up notice to the LEPC and Kansas SERC as described in the preceding Paragraph, constitutes a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

121. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R. § 19.4, Defendant is liable for a civil penalty of up to \$32,500 per day, per violation.

EIGHTH CLAIM FOR RELIEF
(Violations of Section 311 of the CWA at the Bettendorf Facility)

122. Paragraphs 1 through 74 are incorporated herein by reference.

123. The Bettendorf Facility is subject to the SPCC Regulations because it is a “non-transportation related” “onshore facility” that came into operation before August 16, 2002 which is engaged in storing and distributing oil or oil products and has an above-ground storage capacity greater than 1,320 gallons. A discharge from the Bettendorf Facility could occur in harmful quantities and could reasonably be expected to discharge oil into or upon navigable waters of the United States or adjoining shorelines.

124. Beginning in or before June of 2011, Defendant violated numerous SPCC requirements promulgated under Section 311(j) of the CWA and codified at 40 C.F.R. § 112 at the Bettendorf Facility which are set forth in Table 1.A attached to this Complaint and hereby incorporated into this Paragraph.

125. Pursuant to Section 311(b)(7) of the Clean Water Act, 33 U.S.C. § 1321(b)(7) and 40 C.F.R. Part 19.4, Defendant is liable for penalties in an amount up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

126. Subject to a reasonable opportunity for further investigation or discovery, these violations are likely to continue unless enjoined by an order of the Court.

NINTH CLAIM FOR RELIEF
(Violations of Section 311 of the CWA at the CB Facility)

127. Paragraphs 1 through 74 are incorporated herein by reference.

128. The CB Facility is subject to the SPCC Regulations because it is a “non-transportation related” “onshore facility” that came into operation before August 16, 2002 which is engaged in storing and distributing oil or oil products and has an above-ground storage capacity greater than 1,320 gallons. A discharge from the CB Facility could occur in harmful quantities and could reasonably be expected to discharge oil into or upon navigable waters of the United States or adjoining shorelines.

129. Beginning in or before June of 2011, Defendant violated numerous SPCC requirements promulgated under Section 311(j) of the CWA and codified at 40 C.F.R. § 112 at the CB Facility which are set forth in Table 1.B attached to this Complaint and hereby incorporated into this Paragraph.

130. Pursuant to Section 311(b)(7) of the Clean Water Act, 33 U.S.C. § 1321(b)(7) and 40 C.F.R. Part 19.4, Defendant is liable for penalties in an amount up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

131. Subject to a reasonable opportunity for further investigation or discovery, these violations are likely to continue unless enjoined by an order of the Court.

TENTH CLAIM FOR RELIEF
(Violations of Section 311 of the CWA at the DM Facility)

132. Paragraphs 1 through 74 are incorporated herein by reference.

133. The DM Facility is subject to the SPCC Regulations because it is a “non-transportation related” “onshore facility” that came into operation before August 16, 2002 which is engaged in storing and distributing oil or oil products and has an above-ground storage capacity greater than 1,320 gallons. A discharge from the DM Facility could occur in harmful

quantities and could reasonably be expected to discharge oil into or upon navigable waters of the United States or adjoining shorelines.

134. Beginning in or before June of 2011, Defendant violated numerous SPCC requirements promulgated under Section 311(j) of the CWA and codified at 40 C.F.R. § 112 at the DM Facility which are set forth in Table 1.C attached to this Complaint and hereby incorporated into this Paragraph.

135. Pursuant to Section 311(b)(7) of the Clean Water Act, 33 U.S.C. § 1321(b)(7) and 40 C.F.R. Part 19.4, Defendant is liable for penalties in an amount up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

136. Subject to a reasonable opportunity for further investigation or discovery, these violations are likely to continue unless enjoined by an order of the Court.

ELEVENTH CLAIM FOR RELIEF
(Violations of Section 311 of the CWA at the Kansas City, Kansas Facility)

137. Paragraphs 1 through 74 are incorporated herein by reference.

138. The KCK Facility is subject to the SPCC Regulations because it is a “non-transportation related” “onshore facility” that came into operation before August 16, 2002 which is engaged in storing and distributing oil or oil products and has an above-ground storage capacity greater than 1,320 gallons. A discharge from the KCK Facility could occur in harmful quantities and could reasonably be expected to discharge oil into or upon navigable waters of the United States or adjoining shorelines.

139. Beginning in or before June of 2011, Defendant violated numerous SPCC requirements promulgated under Section 311(j) of the CWA and codified at 40 C.F.R. § 112 at

the KCK Facility which are set forth in Table 1.D attached to this Complaint and hereby incorporated into this Paragraph.

140. Pursuant to Section 311(b)(7) of the Clean Water Act, 33 U.S.C. § 1321(b)(7) and 40 C.F.R. Part 19.4, Defendant is liable for penalties in an amount up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

141. Subject to a reasonable opportunity for further investigation or discovery, these violations are likely to continue unless enjoined by an order of the Court.

TWELFTH CLAIM FOR RELIEF
(Violations of RCRA at the CB Facility)

142. Paragraphs 1 through 74 are incorporated herein by reference.

143. The Defendant and the CB Facility, at all times relevant to this action, has each been and continues to be a “generator” of “hazardous waste” and a “storage” facility for “hazardous waste” within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. Parts 260-279.

144. The CB Facility at all times relevant to this action, has been and continues to be a “small quantity universal waste handler” within the meaning of Section 40 C.F.R. § 273.9.

145. Beginning in or before March of 2010, Defendant violated numerous federal RCRA requirements promulgated under Sections 3001 and 3002 of RCRA and codified at 40 C.F.R. § 260-279 at the CB Facility which are set forth in Table 2.A attached to this Complaint and hereby incorporated into this Paragraph.

146. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) and 40 C.F.R. Part 19.4, Defendant is liable for penalties in an amount up to \$32,500 per day, per violation, for each

violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

147. Subject to a reasonable opportunity for further investigation or discovery, Defendant's RCRA violations at the CB Facility continue. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Defendant is liable for injunctive relief for the violations alleged herein.

THIRTEENTH CLAIM FOR RELIEF
(RCRA Violations at the VC Facility)

148. Paragraphs 1 through 74 are incorporated herein by reference.

149. Defendant and the VC Facility, at all times relevant to this action, has each been a "generator" of "hazardous waste" and a "storage" facility for "hazardous waste" within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. Parts 260-279; KAR 28-31-260.

150. The VC Facility at all times relevant to this action was a "small quantity universal waste handler" within the meaning of Section 40 C.F.R. § 273.9; KAR 28-31-273.

151. Beginning in or before March of 2010, Defendant violated numerous federal and Kansas RCRA requirements promulgated under Sections 3001 and 3002 of RCRA and codified at 40 C.F.R. § 260-279, and KAR-31-1 through KAR 31-270 (formerly codified at KAR 28-31-4) at the VC Facility which are set forth in Table 2.B attached to this Complaint and hereby incorporated into this Paragraph.

152. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) and 40 C.F.R. Part 19.4, Defendant is liable for penalties in an amount up \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

FOURTEENTH CLAIM FOR RELIEF
(RCRA Violations at the KCK Facility)

153. Paragraphs 1 through 74 are incorporated herein by reference.

154. The Defendant and the KCK Facility, at all times relevant to this action, has each been and continues to be a “generator” of “hazardous waste” and a “storage” facility for “hazardous waste” within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. Parts 260-279; KAR 28-31-260.

155. Beginning in or before May of 2011, Defendant violated numerous federal RCRA requirements promulgated under Sections 3001 and 3002 of RCRA and codified at 40 C.F.R. § 260-279, and at KAR-31-260-279 (formerly codified at KAR 28-31-4 and at KAR 28-31-14-16) at the KCK Facility which are set forth in Table 2.C attached to this Complaint and hereby incorporated into this Paragraph.

156. Subject to a reasonable opportunity for further investigation or discovery, Defendant’s RCRA violations at the KCK Facility continue. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Defendant is liable for injunctive relief for the violations alleged herein.

157. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) and 40 C.F.R. Part 19.4, Defendant is liable for penalties in an amount up to \$32,500 per day, per violation, for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

A. Assess against Defendant a civil penalty, and enter judgment against Defendant and in favor of the United States, in an amount up to \$32,500 per day, per violation, for each violation

that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day, per violation, for each violation that occurred after January 12, 2009, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 325(c) of EPCRA, 42 U.S.C. § 11045(c); Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7); and Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

B. Award the United States injunctive relief pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 311(e)(2) of the CWA, 33 U.S.C. § 1321(e)(2); and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

C. Grant such other relief as this Court may deem just and proper.

Respectfully submitted,

/s/ John C. Cruden
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U.S. Department of Justice

/s/ Elizabeth L. Loeb
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Table 1

SPCC Violations

Table 1.A. SPCC Violations at the Bettendorf Facility

Regulatory Citation and Requirement	Description of Violation
40 C.F.R. § 112.5(a): Owner/Operator must amend SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. An amendment made under this Section must be prepared within six months and implemented as soon as possible, but not later than six months following preparation of the amendment.	Failure to make Plan amendments as required.
40 C.F.R. § 112.5(b): Owner/Operator must review and evaluate SPCC Plan at least once every five years from the date facility becomes subject to SPCC Regulations, document completion of the review and evaluation, and sign a statement as to whether Plan will be amended.	Plans do not document completion of review or whether amendments are to be made.
40 C.F.R. §112.5(c): Professional Engineer must certify any technical amendments to the SPCC Plan.	Plans did not contain certification by Professional Engineer
40 C.F.R. 112.7(a)(1): Plan must discuss facility's conformance with requirements in Part 112.	Plan did not discuss conformance with requirement in 40 C.F.R. § 112.8(c)(2) that facility construct all bulk storage tank installations to provide secondary means of containment for entire capacity of the largest single container and sufficient freeboard to contain precipitation requiring that dikes, berms, or retaining walls must be sufficiently impervious to contain oil.
40 C.F.R. 112.7(a)(1): Plan must discuss facility's conformance with requirements in Part 112.	Plan did not discuss conformance with 40 C.F.R. § 112.8(c)(1) which requires facility to promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts and removing any accumulation of oil in diked areas.
40 C.F.R. § 112.8(c)(2): Owner/Operator must construct all bulk storage tank installations to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation and requiring that dikes, berms, or retaining walls must be sufficiently impervious to oil.	Secondary containment at facility does not comply with requirements because it cannot contain entire capacity of the largest single container and precipitation.
40 C.F.R. 112.7(a)(1): Plan must discuss facility's conformance with requirements in Part 112.	Plan did not discuss conformance with 40 C.F.R. § 112.8(c)(10) which

	requires facility to promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts and removing any accumulation of oil in diked areas.
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Table 1.B. SPCC Violations at the CB Facility

Regulatory Citation and Requirement	Description of Violation
40 C.F.R. § 112.5(a): Owner/Operator must amend SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. An amendment made under this Section must be prepared within six months and implemented as soon as possible, but not later than six months following preparation of the amendment.	Failure to amend Plan as required.
40 C.F.R. § 112.5(b): Owner/Operator must review and evaluate SPCC Plan at least once every five years from the date your facility becomes subject to SPCC Regulations, document completion of the review and evaluation, and sign a statement as to whether Plan will be amended.	Plans do not document completion of review or state whether amendments are to be made.
40 C.F.R. § 112.5(c): Professional Engineer must certify any technical amendments to the SPCC Plan.	Plans did not contain certification by Professional Engineer.
40 C.F.R. 112.7(a)(1): Plan must discuss facility's conformance with requirements in Part 112.	Plan did not discuss conformance with requirement in 40 C.F.R. § 112.7(h)(1) that facility use a quick drainage system for tank car or tank truck loading/unloading racks where loading/unloading rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges. Containment system must be designed to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.
40 C.F.R. 112.7(a)(1): Plan must discuss facility's conformance with requirements in Part 112.	Plan did not discuss conformance with requirement in 40 C.F.R. § 112.8(c)(2) that facility construct all bulk storage tank installations to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation requiring that dikes, berms, or retaining walls must be sufficiently impervious to contain oil.
40 C.F.R. § 112.8(2): Owner/ Operator must provide secondary means of containment for entire capacity of largest single container and sufficient freeboard to contain precipitation and requiring dikes, berms, or retaining walls must be sufficiently impervious to oil.	Secondary containment cannot contain entire capacity of the largest single container and precipitation.

Table 1.C. SPCC Violations at the DM Facility

Regulatory Citation and Requirement	Description of Violation
40 C.F.R. § 112.5(a): Owner/Operator must amend SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. An amendment made under this Section must be prepared within six months and implemented as soon as possible, but not later than six months following preparation of the amendment.	Failure to make Plan amendments as required.
40 C.F.R. § 112.5(b): Owner/Operator must review and evaluate SPCC Plan at least once every five years from the date your facility becomes subject to SPCC Regulations, document completion of the review and evaluation, and sign a statement as to whether Plan will be amended.	Plans do not document completion of review or whether amendments are to be made.
40 C.F.R. §112.5(c): Professional Engineer must certify any technical amendments to SPCC Plan.	Plans did not contain required certification by Professional Engineer
40 C.F.R. 112.7(a)(1): Plan must discuss facility's conformance with requirements in Part 112.	Plan did not discuss conformance with requirement in 40 C.F.R. § 112.8(c)(11) that facility position or locate mobile or portable oil storage containers to prevent a discharge as described in 40 C.F.R. § 112.1(b).
40 C.F.R. 112.7(a)(1): Plan must discuss facility's conformance with requirements in Part 112.	Plan did not discuss conformance with 40 C.F.R. § 112.8(d)(3) which requires facility to properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

Table 1.D. SPCC Violations at the KCK Facility

Regulatory Citation and Requirement	Description of Violation
40 C.F.R. § 112.5(a): Owner/Operator must amend SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. An amendment made under this Section must be prepared within six months and implemented as soon as possible, but not later than six months following preparation of the amendment.	Failure to make Plan amendments as required.
40 C.F.R. § 112.5(b): Owner/Operator must review and evaluate SPCC Plan at least once every five years from the date your facility becomes subject to SPCC Regulations, document completion of the review and evaluation, and sign a statement as to whether Plan will be amended.	Plans do not document completion of review or whether amendments are to be made.
40 C.F.R. §112.5(c): Except as provided in 112.6, Professional Engineer must certify any technical amendments to the SPCC Plan.	Plans did not contain required certification by Professional Engineer

TABLE 2: RCRA VIOLATIONS

**Table 2.A. RCRA Violations at the CB Facility
March 23, 2010 and December 8-9, 2010 Inspections**

1. Hazardous Waste Determination Violations

Regulatory Citation and Requirement	Description of Violation
40 C.F.R. 262.11: A person who generates a solid waste, as defined in 40 C.F.R. 261.2, must determine if waste is a hazardous waste using specified methods.	Facility failed to perform adequate hazardous waste determination on spent paint filters.
40 C.F.R. 262.11: A person who generates a solid waste, as defined in 40 C.F.R. 261.2, must determine if waste is a hazardous waste using specified methods.	Facility failed to perform adequate hazardous waste determination on tank farm water.

2. Operating without A Permit or Interim Status

Hazardous waste may be stored on-site for 90 days or less without a Permit or Interim Status if specified Storage Requirements, Contingency Plan, and Emergency Procedure Requirements, and Training Requirements are met. 40 C.F.R. 262.34 (a).

a. Violation of Storage Requirements

Regulatory Citation(s) and Requirements	Description of Violation
40 C.F.R. 262.34 (a)(3): The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.	Facility failed to date four 55-gallon hazardous waste storage containers.
40 C.F.R. 262.34 (a)(3): The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.	Dates on 3 rd row of containers were not visible.
40 C.F.R. 265.174; 40 C.F.R. 262.34(a)(1)(i) (requiring compliance with 40 C.F.R. 265.174): At least weekly, the owner or operator must inspect areas where containers are stored.	Weekly inspections performed were not adequate because all sides of container were not visible and drums were not brought down for inspection.
40 C.F.R. 262.34(c)(1)(ii): The generator must mark the containers "either with the words "Hazardous Waste" or with other words that identify the contents of the containers."	Facility failed to label one satellite accumulation container with words that identify its contents or with the words "Hazardous Waste."
40 C.F.R. § 265.35 and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.35): The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility	Facility had inadequate aisle space to allow unobstructed view of drums, movement of emergency equipment and personnel and stacked ignitable waste.

operation in an emergency, unless aisle space is not needed for any of these purposes.	
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b. Violations of Contingency Plan and Emergency Procedure Requirements

Regulatory Citation(s) and Requirements	Description of Violation
40 C.F.R. 265.52(f) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.52(f)): Facility Contingency Plan must include evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).	Facility's Contingency Plan did not describe evacuation signals.
40 C.F.R. 265.52(f) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(f)): Facility Contingency Plan must include evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).	Facility's Contingency Plan did not describe alternate evacuation routes.
40 C.F.R. 265.52(e) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(e)): Facility Contingency Plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the Plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.	Facility's Contingency Plan did not provide a brief outline of emergency equipment capabilities.
40 C.F.R. 265.52(e) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(e)): Facility Contingency Plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the Plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.	Facility's Contingency Plan emergency equipment list did not identify the location of where the emergency equipment can be found.

<p>40 C.F.R. 265.37 and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.37): Owner or operator of a facility must attempt to make arrangements with local police, fire departments, emergency response teams, and hospitals to familiarize them with the facility and hazardous waste handled there and designate primary responders or document the refusal of state or local authorities to enter into such arrangements.</p>	<p>Facility did not have required arrangements with local authorities or documentation that local authorities had refused such arrangements.</p>
<p>40 C.F.R. 265.53(b) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.53(b)): Copies of the Contingency Plan and updates must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.</p>	<p>Facility failed to provide copies of its Contingency Plan and updates to local authorities.</p>
<p>40 C.F.R. 265.52(a) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(a)): Facility must have Contingency Plan that describes actions facility will take to comply with §§265.51 and 265.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.</p>	<p>Facility's Contingency Plan did not clearly describe the actions the facility will take to comply with 40 C.F.R. 265.51 and 265.56.</p>
<p>40 C.F.R. 265.55 and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.55): "At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's Contingency Plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the Contingency Plan."</p>	<p>Facility failed to have an emergency coordinator at all times thoroughly familiar with all aspects of the facility's Contingency Plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, the facility layout and with the authority to commit the resources needed to carry out the Contingency Plan.</p>

c. Violation of Training Requirements

Regulatory Citation(s) and Requirements	Description of Violation
<p>40 C.F.R. 265.16(d)(1) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.16(d)(1)): Facility must maintain training records that document “The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.”</p>	<p>Facility’s training records failed to document the job titles for each position at the facility related to hazardous waste management, and the name of each person filling each job.</p>
<p>40 C.F.R. 265.16(d)(2) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.16(d)(2)): Facility must maintain a written job description for each position listed under paragraph (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.</p>	<p>Facility’s training records failed to provide job descriptions for employees assigned to hazardous waste duties.</p>
<p>40 C.F.R. 265.16(d)(3); 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(d)(3)): Facility must maintain training records including description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of 40 C.F.R. 265.16.</p>	<p>Facility’s training records failed to include a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of 40 C.F.R. 265.16.</p>
<p>40 C.F.R. 265.16(a)(3) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(a)): Facility must have a training program designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable: (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (ii) Key parameters for automatic waste feed cut-off systems; (iii) Communications or alarm systems; (iv) Response to fires or explosions; (v) Response to ground-water contamination incidents; and (vi) Shutdown of operations.</p>	<p>Facility training program did not meet applicable requirements including but not limited to training on: (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (ii) Key parameters for automatic waste feed cut-off systems; (iii) Communications or alarm systems; (iv) Response to fires or explosions; (v) Response to ground-water contamination incidents; and (vi) Shutdown of operations.</p>

3. **Storage of Hazardous Wastes In Excess of 90 Days**

Citation(s) and Requirements	Description of Violation
40 C.F.R. 262.34(a); 42 U.S.C. 6925: Hazardous wastes may be stored for up to 90 days without a Permit or Interim Status.	One 55-gallon of hazardous waste stored for 27 days over the 90 day accumulation limit without a permit.

4. **Universal Waste Violations**

Citation(s) and Requirements	Description of Violation
40 C.F.R. 273.13(d)(1): A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.	Facility failed to close one universal waste storage container
40 C.F.R. 273.15(c): A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that universal waste has been accumulated from the date it becomes a waste or is received.	Facility did not date or otherwise track universal wastes to demonstrate the length of time of accumulation.
40 C.F.R. 273.14(e): Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)".	Facility failed to properly label one container of spent fluorescent lamps.

**Table 2.B. RCRA Violations at the VC Facility
November 2-3, 2010 Inspection**

1. Inadequate Hazardous Waste Determination

Regulatory Citation and Requirement	Description of Violation
40 C.F.R. 262.11; KAR 28-31-262 (formerly KAR 28-31-4): A person who generates a solid waste, as defined in 40 C.F.R. 261.2, must determine if that waste is a hazardous waste using specified methods.	Facility failed to perform hazardous waste determination on commercial chemical product (CCP) spills at the rail loading/unloading yard and warehouse and packaging area.

2. Failure to Comply with Manifest Requirements

Regulatory Citation and Requirement	Description of Violation
40 C.F.R. 262.20(a); KAR 28-31-262 (formerly KAR 28-31-4(d)(1)): Facility must provide notice to land disposal facilities receiving waste of specified information about wastes .	Land disposal notices did not have all the required information including Failed to mark Sept 14 2010 manifest w/ hazardous waste identification codes for waste flammable solids (D001, F003,F005 previously disposed of).

3. Operating without a Permit or Interim Status

Hazardous waste may be stored on-site for 90 days or less without a Permit or Interim Status if specified Storage Requirements, Contingency Plan and Emergency Procedures Requirements, and Training Requirements are met. 40 C.F.R. 262.34 (a); KAR 28-31-262 (formerly KAR 28-31-4).

a. Violation of Storage Requirements

Regulatory Citation(s) and Requirements	Description of Violation
40 C.F.R. 265.171; KAR 28-31-265 (formerly KAR 28-31-4(g)(1)(A): If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this Part.	Hazardous waste storage container not in good condition (severely dented).
40 C.F.R. § 265.35 and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.35); KAR 28-31-265 (formerly KAR 28-31-4(g)(4): Facility must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill	Facility had inadequate aisle space to allow unobstructed view of drums, movement of emergency equipment and personnel and stacked ignitable waste.

control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.	
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b. Violations of Contingency Plan and Emergency Procedures Requirements

Regulatory Citation(s) and Requirements	Description of Violation
40 C.F.R. 265.52(f) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.52(f)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility Contingency Plan must include an evacuation Plan for facility personnel where there is a possibility that evacuation could be necessary. This Plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).	Facility's Contingency Plan did not describe evacuation signals.
40 C.F.R. 265.52(f) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(f)); KAR 28-31-265(formerly KAR 28-31-4(g)(4)): Facility Contingency Plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).	Facility Contingency Plan did not describe alternate evacuation routes.
40 C.F.R. 265.52(e) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(e)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility Contingency Plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the Plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.	Facility's Contingency Plan did not provide a brief outline of emergency equipment capabilities.
40 C.F.R. 265.52(e) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(e)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility Contingency Plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and	Facility's Contingency Plan emergency equipment list does not identify the location of where the emergency equipment can be found.

<p>external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, Plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.</p>	
<p>40 C.F.R. 265.53(b) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.53(b)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Copies of the Contingency Plan and updates must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.</p>	<p>Facility failed to provide copies of its Contingency Plan and updates to local authorities.</p>
<p>40 C.F.R. 265.52(a) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(a)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must have Contingency Plan that describes actions facility will take to comply with §§265.51 and 265.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.</p>	<p>Facility's Contingency Plan did not clearly describe the actions the facility will take to comply with 40 C.F.R. 265.51 and 265.56.</p>
<p>40 C.F.R. 265.55 and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.55); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): "At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's Contingency Plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the Contingency Plan."</p>	<p>Facility failed to have an emergency coordinator at all times thoroughly familiar with all aspects of the facility's Contingency Plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, the facility layout and has the authority to commit the resources needed to carry out the Contingency Plan.</p>
<p>40 C.F.R. 265.33 and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.33); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): "All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency."</p>	<p>Fire protection equipment and decontamination equipment not tested and maintained to assure proper operations. Four fire extinguishers in East Warehouse and dock had not been inspected annually. The eye wash station located at the dock was inoperable.</p>

<p>40 C.F.R. 265.52(d) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.52(d)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility Contingency Plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see §265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.</p>	<p>Facility's Contingency Plan does not include the home addresses or phone numbers of the emergency coordinators.</p>
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c. Violation of Training Requirements

Regulatory Citation(s) and Requirements	Description of Violation
<p>40 C.F.R. 265.16(d)(1) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(d)(1)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must maintain training records that document "The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job."</p>	<p>Facility's training records failed to document the job titles for each position at the facility related to hazardous waste management, and the name of each person filling each job.</p>
<p>40 C.F.R. 265.16(d)(2) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(d)(2)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must maintain a written job description for each position assigned to hazardous waste duties that includes the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.</p>	<p>Facility's training records failed to provide job descriptions for employees assigned to hazardous waste duties.</p>
<p>40 C.F.R. 265.16(d)(3) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(d)(3)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must maintain training records including description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of 40 C.F.R. 265.16.</p>	<p>Facility's training records failed to include a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of 40 C.F.R. 265.16.</p>
<p>40 C.F.R. 265.16(a)(3) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(a)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must have a training program designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where</p>	<p>Facility training program did not meet applicable requirements including but not limited to (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (ii) Key parameters for automatic waste feed cut-off</p>

<p>applicable, (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (ii) Key parameters for automatic waste feed cut-off systems; (iii) Communications or alarm systems; (iv) Response to fires or explosions; (v) Response to ground-water contamination incidents; and (vi) Shutdown of operations.</p>	<p>systems; (iii) Communications or alarm systems; (iv) Response to fires or explosions; (v) Response to ground-water contamination incidents; and (vi) Shutdown of operations.</p>
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**Table 2.C. RCRA Violations at the KCK Facility
May 4-6, 2011 Inspection**

1. Hazardous Waste Determination Violations

Regulatory Citation and Requirement	Description of Violation
40 C.F.R. 262.11 & KAR 28-31-262 (formerly KAR 28-31-4(b)): A person who generates a solid waste, as defined in 40 C.F.R. 261.2, must determine if that waste is a hazardous waste using specified methods.	Facility failed to perform adequate hazardous waste determination on spent absorbent pads, dry floor material, used gloves, tank farm solids.
KAR 28-31-262(c)(2) (formerly KAR 28-31-4(b)(3)(A)): Each person that generates hazardous waste must determine if that waste is a hazardous waste by submitting the waste for testing to a certified laboratory.	Facility failed to use a laboratory that is certified by KDHE for hazardous waste determinations.

2. Failure to Comply with Land Disposal Restrictions

Regulatory Citation and Requirement	Description of Violation
40 C.F.R. 268.7(a)(4)(2); KAR-28-268 (formerly KAR 28-31-14): Facility must provide notice to land disposal facilities receiving waste of specified information about wastes.	Facility failed to include required information in notices to land disposal facility including RCRA waste codes, manifest numbers, the constituents of concern for F001 through F005 in written notices to TSD facilities.

3. Operating as a Without a Permit or Interim Status

Hazardous waste may be stored on-site for 90 days or less without a Permit or Interim Status if specified Storage Requirements, Contingency Plan and Emergency Procedure Requirements and Training Requirements are met. 40 C.F.R. 262.34 (a); KAR 28-31-262 (formerly KAR 28-31-4).

a. Violation of Storage Requirements

Regulatory Citation(s) and Requirements	Description of Violation
40 C.F.R. 265.177(c) and 40 C.F.R. 262.34(a)(1)(i) (requiring compliance with 40 C.F.R. 265.177); KAR 28-31-265 (formerly KAR 28-31-4(g)(1)(A)): A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other	Incompatible wastes were not kept separated in the hazardous waste storage area which could pose a risk of fire and explosion.

materials or protected from them by means of a dike, berm, wall, or other device.	
40 C.F.R. 265.173(a) and 40 C.F.R. 262.34(a)(1)(i) (requiring compliance with 40 C.F.R. 265.173(a)); KAR 28-31-265 (formerly KAR 28-31-4(j)(1)(A)): A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.	Facility failed to close satellite accumulation container in Loading/Unloading Area.
40 C.F.R. 262.34(a)(2); KAR 28-31-262 (formerly KAR 28-31-4(g)(2)): “[t]he date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.”	Facility failed to date storage accumulation container in Drum Recertification Area with start date of accumulation.
40 C.F.R. 265.174 and 40 C.F.R. 262.34(a)(1)(i) (requiring compliance with 40 C.F.R. 265.174); KAR 28-31-265 (formerly KAR 28-31-4(g)(1)(A)): At least weekly, the owner or operator must inspect areas where containers are stored.	Facility failed to conduct weekly inspections of storage container in Drum Recertification Area.

b. Violations of Contingency Plan and Emergency Procedure Requirements

Regulatory Citation(s) and Requirements	Description of Violation
40 C.F.R. 265.52(f) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(f)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility Contingency Plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This Plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).	Facility Contingency Plan did not describe alternate evacuation routes.
40 C.F.R. 265.52(a) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(a)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must have Contingency Plan that describes actions facility will take to comply with §§265.51 and 265.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.	Facility’s Contingency Plan did not clearly describe the actions the facility will take to comply with 40 C.F.R. 265.51 and 265.56.

<p>40 C.F.R. 265.55 and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.55); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): “At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's Contingency Plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the Contingency Plan.”</p>	<p>Primary and alternate emergency coordinators at facility were not thoroughly familiar with facility Contingency Plan as required.</p>
<p>40 C.F.R. 265.52(e); and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.52(e)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility Contingency Plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the Plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.</p>	<p>Facility’s Contingency Plan does not include all spill control equipment, specifically soda ash used to neutralize spills.</p>
<p>40 C.F.R. 265.53(b) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.53(b)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Copies of the Contingency Plan and updates must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.</p>	<p>Facility failed to submit copies of and updates to its Contingency Plan to local authorities.</p>
<p>40 C.F.R. 265.37(b) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.37); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Owner or operator of a facility must attempt to make arrangements to arrangements with local police, fire departments, emergency response teams, hospitals to familiarize them with the facility and hazardous waste handled there and designate primary responders or document the refusal of state or local authorities to enter into such arrangements.</p>	<p>Facility failed to document in operating record that arrangements with local authorities were refused.</p>

c. Violation of Training Requirements

Regulatory Citation(s) and Requirements	Description of Violation
<p>40 C.F.R. 265.16(d)(1) and 40 C.F.R. 262.34(a) (4) (requiring compliance with 40 C.F.R. 265.16(d)(1)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must maintain training records that document “The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.”</p>	<p>Facility’s training records failed to document the job titles for each position at the facility related to hazardous waste management, and the name of each person filling each job.</p>
<p>40 C.F.R. 265.16(d)(2) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(d)(2)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must maintain a written job description for person assigned to hazardous waste duties that includes the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.</p>	<p>Facility’s training records failed to provide job descriptions for employees assigned to hazardous waste duties.</p>
<p>40 C.F.R. 265.16(d)(3) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(d)(3)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must maintain training records including description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of 40 C.F.R. 265.16.</p>	<p>Facility’s training records failed to include a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of 40 C.F.R. 265.16.</p>
<p>40 C.F.R. 265.16(a)(3) and 40 C.F.R. 262.34(a)(4) (requiring compliance with 40 C.F.R. 265.16(a)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must have a training program designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, equipment, and systems including: (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (ii) Key parameters for automatic waste feed cut-off systems; (iii) Communications or alarm systems; (iv) Response to fires or explosions; (v) Response to ground-water contamination incidents; and (vi) Shutdown of operations.</p>	<p>Facility’s training program did not meet applicable requirements including but not limited to: (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (ii) Key parameters for automatic waste feed cut-off systems; (iii) Communications or alarm systems; (iv) Response to fires or explosions; (v) Response to ground-water contamination incidents; and (vi) Shutdown of operations.</p>
<p>40 C.F.R. 265.16(d)(4) and 40 C.F.R. 262.34(a) (4)(requiring compliance with 40 C.F.R. 265.16(d)(4)); KAR 28-31-265 (formerly KAR 28-31-4(g)(4)): Facility must maintain Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this Section has been given to, and completed by, facility personnel.</p>	<p>Facility failed to maintain records documenting training that occurred.</p>

