

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of

Port Hamilton Refining and Transportation  
LLLP,

Respondent,

Proceeding under Section 113 of the  
Clean Air Act, 42 U.S.C. § 7413.

Index No. CAA-02-2024-1006

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION AND JURISDICTION

1. The parties to this Administrative Order on Consent ("Consent Order") are Port Hamilton Refining and Transportation LLLP ("Respondent") and the U.S. Environmental Protection Agency ("EPA") (collectively, the "Parties").
2. Respondent is an owner and operator of a refinery located at 1 Estate Hope, St. Croix, U.S. Virgin Islands, where certain extremely hazardous substances are used and/or stored (the "Facility").
3. This Consent Order is issued pursuant to Section 113(a)(3) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(3), and the findings herein ("Findings") are made regarding compliance with the general duty clause provisions of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), concerning the Facility.
4. This Consent Order is entered into upon mutual agreement by the Parties. Accordingly, Respondent agrees to undertake all actions required of it by the terms and conditions of this Consent Order. Respondent consents to and agrees not to contest the authority or jurisdiction of the Director of the Superfund and Emergency Management Division of EPA Region 2 to issue or enforce this Consent Order, and it also agrees not to contest the validity or terms of this Consent Order in any action to enforce its provisions, subject to Paragraph 59.
5. This Consent Order shall apply to and be binding upon Respondent and its officers, agents, employees, successors, and assigns. Respondent agrees to ensure that all persons, firms, corporations, contractors, and consultants acting under, through, or for Respondent are made aware of the terms of this Consent Order and perform such work

in compliance with this Consent Order. No change in ownership or corporate or partnership status of Respondent will in any way alter the status of Respondent as it pertains to its responsibilities under this Consent Order.

## II. STATUTORY AND REGULATORY AUTHORITY

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as under 29 U.S.C. § 654, to identify hazards that may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases that do occur.
7. Pursuant to Sections 112(r)(3) and (5) of the CAA, 42 U.S.C. § 7412(r)(3) and (5), EPA has promulgated a list of regulated substances with threshold quantities set forth at 40 C.F.R. § 68.130.
8. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes EPA to issue compliance orders for violations of the CAA, including violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).
9. The authority to issue such orders pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), has been delegated to EPA Region 2's Regional Administrator and has been redelegated to EPA Region 2's Director of the Superfund and Emergency Management Division.

## III. DEFINITIONS

10. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines "stationary source" as, *inter alia*, any buildings, structures, equipment, installations, or substance-emitting stationary activities that belong to the same industrial group, that are located on one or more contiguous properties, that are under the control of the same person (or persons under common control) and from which an accidental release may occur.
11. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), defines "regulated substance" as a substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of substances regulated under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), is set forth at 40 C.F.R. § 68.130.
12. As used herein, the term "extremely hazardous substance" refers to substances which are subject to the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), in addition to regulated substances as defined above, and would include any agent which may or may not be listed or otherwise identified by any Government agency which may

as the result of short-term exposures associated with releases to the air cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity.

13. As used herein, the term "day" shall mean calendar day.
14. All terms not defined herein shall have their ordinary meanings, unless such terms are defined in the CAA or its implementing regulations, in which case the statutory and regulatory definitions apply.

#### IV. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. Respondent is an owner and operator of the Facility, which is a petroleum refinery. Refining operations at the Facility are currently idled.

##### 2022 GDC Inspection and Order

16. EPA performed an inspection at the Facility on September 20 - 26, 2022, regarding compliance with the general duty set forth in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) (the "2022 GDC Inspection"). During the 2022 GDC Inspection, EPA inspectors requested that Respondent provide a process unit chemical inventory, including a list of chemicals for each specific process unit at the Facility. Respondent provided the inspectors with an inventory during the inspection, and by email on September 21, 2022. This inventory identified, among other things, ammonia in the Ammonia Drum, liquified petroleum gas ("LPG") in LPG Unit #3, and an enriched amines solution that contained hydrogen sulfide in the Amine Units.
17. Following the 2022 GDC Inspection, on December 5, 2022, Respondent entered into an administrative order on consent with EPA, Index Number CAA-02-2023-1003 (the "2022 GDC Order"). The 2022 GDC Order required the removal of the three materials from the Facility that were identified in the inventory and in information provided by Respondent related to the 2022 GDC Inspection – namely, ammonia from the Ammonia Drum, LPG from LPG Unit #3, and the amine solution and the associated hydrogen sulfide from the Amine Units. Respondent agreed to remove these materials because EPA determined that the conditions at the Facility presented a threat that must be addressed to prevent a release.
18. During the course of the removal of the materials pursuant to the 2022 GDC Order, Respondent identified additional LPG that was present in the Amine Units that Respondent indicated it became aware of during the removal of the amine solution. Respondent removed this LPG as part of the work being performed pursuant to the 2022 GDC Order.

### 2023 GDC Inspection

19. EPA conducted a second inspection of the Facility on September 25 - 29, 2023, to assess compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) (the "2023 GDC Inspection"). During the 2023 GDC Inspection, including during the exit interview, EPA informed Respondent of observations made during the 2023 GDC Inspection. EPA provided its report for the 2023 GDC Inspection to Respondent on December 19, 2023.
20. The 2023 GDC Inspection included a review of available documentation and visual inspections of equipment at the Facility and an inventory of the contents of various systems and/or process units. During the 2023 GDC Inspection, the inspectors evaluated, among other things, #1 LPG Treater Unit ("LPG Unit #1") and #2 LPG Treater Unit ("LPG Unit #2") (collectively referred to as "LPG Units #1 and #2"). While the 2023 GDC Inspection did not include any material thickness testing or related mechanical integrity testing, EPA's observations raised concerns about the integrity of LPG Units #1 and #2. On July 28, 2023, Respondent provided an inventory to EPA as part of a response to an EPA request for information submitted pursuant to the CAA. Respondent referred to that inventory during the 2023 GDC Inspection.
21. LPG Units #1 and #2 contain various materials, including, but not limited to, LPG, propane, butane, isopentane, pentane, and potentially hydrogen sulfide. Some of these materials are held under pressure.
22. LPG refers generally to a category of flammable hydrocarbon gases and can be a mixture of these gases, including propane and butane.
23. Butane, propane, isopentane, pentane, and hydrogen sulfide are extremely hazardous substances, and they are regulated substances listed pursuant to Section 112(r)(2) and (3) of the CAA, 42 U.S.C. § 7412(r)(2) and (3), and 40 C.F.R. § 68.3 and 68.130.
24. Butane, propane, isopentane, and pentane are highly flammable gases. These substances can form explosive mixtures with air and may explode if heated. Hydrogen sulfide is extremely flammable and highly toxic.
25. During the 2023 GDC Inspection, EPA inspectors toured and visually inspected the following process units at the Facility: #5 Crude Unit; #6 Crude Unit; #4 Platformer; LPG Units #1 and #2, and the coke handling and storage areas, specifically, Dome 1 and the Western Coke Pit.
26. During the 2023 GDC Inspection, representatives of Respondent confirmed the presence of materials in LPG Units #1 and #2. Respondent provided analytic results showing that LPG Units #1 and #2 contain LPG, propane, butane, isopentane, pentane, and other flammable hydrocarbons. There is also caustic (sodium hydroxide) present in vessels within LPG Units #1 and #2, and there may be hydrogen sulfide present in those units as

well. Collectively, all of these substances in LPG Units #1 and #2 are hereinafter referred to as "Materials."

27. At the time of the 2022 GDC Inspection, Respondent did not identify LPG Units #1 and #2 or any material present in those units in the written inventory that was provided to EPA at the time of the inspection.
28. The EPA inspection report for the 2022 GDC Inspection included the statement that, among other things, numerous examples of corrosion were observed by EPA on process valves, flanges, pipes, nuts/bolts, and pressure relief devices in all unit processes. EPA observed similar conditions during the 2023 GDC Inspection, including at LPG Units #1 and #2, as set forth in the EPA inspection report for the 2023 GDC Inspection.
29. EPA has concluded that Respondent does not have a sufficient maintenance and/or a mechanical integrity program that includes the performance of, and documents the conditions found during, inspections, tests, and repairs of process equipment at the Facility.
30. During the 2023 GDC Inspection, EPA inspectors identified safety concerns that they concluded could result in a release, fire, and/or explosion. During the Facility tour portion of the 2023 GDC Inspection, EPA inspectors observed conditions that they believed demonstrated a lack of maintenance and examples of corrosion on process valves, flanges, pipes, nuts/bolts, and pressure relief devices in unit processes, including in LPG Units #1 and #2. EPA also observed certain gaskets were in poor condition and exhibited corrosion.
31. The equipment in LPG Units #1 and #2 contain LPG and flammable regulated substances, including propane, butane, isopentane, and pentane, in excess of the 10,000-pound threshold for Risk Management Plan eligibility for butane, propane, and flammable mixtures.
32. The types and volumes of materials in LPG Units #1 and #2 can present a risk of release, fire, and/or explosion, including potential off-Facility impacts.
33. Damage to valves could complicate efforts to remove extremely hazardous substances safely from Facility equipment, including from LPG Units #1 and #2.
34. Other equipment and containers at the Facility may also contain regulated substances and extremely hazardous substances. This includes process equipment as well as other storage containers and may include containers in warehouses.
35. Codes and standards that may apply to equipment at the Facility that contains extremely hazardous substances, including LPG, include the following:

For Pressure Vessels:

Design and Construction: American Society of Mechanical Engineers  
("ASME") VIII Div. 1 & 2

Inspection and Repair: National Board of Inspection Codes ("NBIC") 23  
API 510, 572, & 579

For Valves:

Design and Construction: ASME B16.34; API 600 & 609

Inspection and Repair: API 598 & API Recommended Practice 591

For Piping

Design and Construction: ASME B31.X & B31.3

Inspection and Repair: API 570, 574, & 579

For Pressure Relief Devices

Design and Construction: ASME I, IV, & VII; API 2000

Inspection and Repair: NBIC 23; API Recommended Practice 576 & 510

For Aboveground Storage Tanks

Design and Construction: API 12B, 620, & 650

Inspection and Repair: API 653 & 579

36. On May 2, 2024, EPA inspectors conducted a GDC inspection of the Hazardous Waste Storage Area and the Chemical Storage Area of the Facility. The Chemical Storage Area contains both Respondent's chemicals and chemicals owned by the owner of the neighboring facility, Ocean Point Terminal, and the two companies are in the process of segregating their respective inventories for storage in separate areas of the Chemical Storage Area. Numerous chemical totes and drums were observed to be in deteriorated condition. EPA observed numerous instances of deteriorated containers, bungs, and pallets. All of these containers were located in an area with secondary containment. Following EPA's May 2024 inspection, Respondent stated that they have transferred chemicals to new containers (drums and totes), placed the drums on new pallets, and moved the containers to designated storage areas. EPA confirmed the materials were secured and segregated on July 9, 2024.
37. On June 26, 2024, Respondent provided to EPA an updated draft inventory of the materials at the Port Hamilton facility. On June 27, 2024, Respondent forwarded to EPA a draft report that contained an audit performed by its consultant, ioMosaic

Corporation ("ioMosaic"), of the process unit inventory that had been conducted by PHRT.

38. Conditions at the Facility could present a significant risk to the workers, the community, and emergency responders in the event of a release, fire, and/or explosion.
39. Respondent is, and at all times referred to herein was, a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
40. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).
41. At the Facility, Respondent stores, processes, and/or handles substances that are regulated substances and/or extremely hazardous substances pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r).
42. Based on information available to EPA, including as described above, EPA has determined that Respondent has failed to comply with the general duty, pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), as that duty is described in Paragraph 6, above, and that such failure is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

#### V. CONSENT ORDER

43. Based upon the foregoing EPA's Findings of Fact and Conclusions of Law, and other information available to EPA, EPA hereby orders Respondent, and Respondent voluntarily agrees, to comply with the requirements set forth below.
44. Respondent shall undertake the following actions regarding the Facility:
  - a. Respondent agrees not to disturb or remove any Materials in and from LPG Units #1 and #2 except in accordance with the procedures set forth in Subparagraph c., below, and with the use of qualified, approved contractors.
  - b. Interim Measures. Respondent has indicated to EPA that it has already initiated some of the following interim measures ("Interim Measures") set forth in this Subsection 44. b., and EPA has not yet had the opportunity to determine if, or to what extent, the Interim Measures have been initiated. Notwithstanding, at a minimum, Respondent shall commence or continue to perform the following Interim Measures from the Effective Date of this Consent Order or within the specific time frames set forth below until completion of removal of Materials under this Consent Order. Additional Interim Measures may be required by EPA regarding the Materials, and also regarding any other materials that are identified during the performance of the work under this Consent Order, including the work described below in Subparagraph c.

- i. Staffing, Support, and Training. Respondent shall commence or continue to maintain a two-person crew to perform nightshift walk downs of LPG Units #1 and #2. Respondent shall engage an experienced, on-site contractor who can deploy immediately to provide emergency response support at the Facility and prepare an emergency response plan. Respondent shall train or retrain newly hired or existing operations personnel, respectively, with respect to responding to a leak of any material being addressed under this Consent Order. Within thirty (30) days of the Effective Date of this Consent Order, Respondent shall confirm completion of refresher training for operations and maintenance personnel regarding the operation and use of fire hydrants or any other equipment necessary for immediate response to a release of any of the Materials.
  - ii. Inspections and Monitoring. Respondent shall commence or continue to perform walk-downs of LPG Units #1 and #2 no less than six (6) times per day, visually inspecting these units and monitoring pressure levels within those systems, beginning at the latest upon the Effective Date of this Consent Order. Within fourteen (14) days of the Effective Date of this Consent Order, Respondent shall operate and maintain no less than ten (10) additional portable analyzers (portable or hand-held air monitoring equipment), which are to be used in close proximity to LPG Units #1 and #2 to monitor for hydrogen sulfide and combustible gases (lower explosive limits). Should EPA become aware of materials or substances other than the Materials listed and defined above, additional portable analyzers (portable or hand-held air monitoring equipment) may be required. Within systems containing Materials, Respondent shall test the Facility's fire monitors for water flow no less than once each month, beginning at the latest upon the Effective Date of this Consent Order, to ensure that the fire monitors are functioning properly.
- c. Removal of Materials from LPG Units #1 and #2.
  - i. EPA approves of Respondent's selection of Specialized Response Solutions, LLC, a Republic Services Company, to perform the work described in this Subparagraph.
  - ii. Within fourteen (14) days of the Effective Date of this Consent Order, Respondent shall submit a work plan and schedule for this work to EPA for approval. The work plan and schedule shall include the following: the determination of the Materials-containing boundaries of LPG Units #1 and #2 and the extent and presence of the Materials in these systems; an assessment of the integrity of LPG Units #1 and #2 utilizing the services of an API-510/570 Inspector to ensure that the Materials in these systems can be safely removed; the removal of all remaining Materials from LPG Units #1 and #2; sampling the Materials (including for levels of hydrogen sulfide);



removal of the Materials from LPG Units #1 and #2 for on-site and/or off-site disposition consistent with applicable environmental laws and regulations; and details related to how any substances that are planned to be added to LPG Units #1 and/or #2 will be addressed (such as materials currently contained in the ISO container as a result of work performed under the prior GDC Order at the Facility).

- iii. The final disposition of all Materials, including any by-products, residues, or other substances generated during the onsite and/or offsite removal and/or disposition of the Materials, shall be completed as expeditiously as practicable, but in no event more than five (5) months after the removal of the Materials from LPG Units #1 and #2 commences.
- iv. Within thirty (30) days of the Effective Date of this Consent Order, Respondent shall apply for all necessary permits and authorizations from EPA and the U.S. Virgin Islands Department of Planning and Natural Resources for the removal and, if applicable, treatment and/or destruction of the Materials from LPG Units #1 and #2.
- v. After receipt of the work plan and the proposed schedule, EPA will review these documents and provide any comments in writing. Respondent shall address any comments that EPA may have and, if necessary, resubmit the work plan and proposed schedule to EPA within seven (7) days for EPA review or another mutually agreed upon deadline.
- vi. Once EPA approves the work plan and proposed schedule, Respondent shall as soon as practicable, but no later than five (5) business days after receiving EPA's approval in writing, direct its contractor to commence the work in accordance with the approved work plan and schedule. Respondent shall submit weekly progress reports to EPA during the field work until the approved actions are completed. Work performed under this work plan shall include the requirement for submitting to EPA, as soon as available, proof of final on-site or off-site disposition of the Materials, including any rinsate or any waste (including any hazardous waste) resulting from this work. For any of these Materials that are sold, this submission to EPA must include a bill of lading and confirmation of receipt of the Material by the recipient, and for any of these Materials, including any hazardous waste, that are transported, treated and/or disposed of off-site, the submission to EPA, must include, without delay, the hazardous waste manifests and certificates of treatment or destruction as soon as they are available.
- vii. If Respondent needs to propose a different, or additional, contractor for any of this work, Respondent shall follow the process in Subparagraph 44.e., (Contractor[s]), below.

d. Inventory.

- i. Respondent has retained ioMosaic to perform a portion of this work, as identified in Paragraph 44.d.ii., and RTP Environmental Associates, Inc. ("RTP") to perform a portion of this work, as identified in Paragraph 44.d.iii.
- ii. Within thirty (30) days of the Effective Date of this Consent Order, ioMosaic will complete an audit of Respondent's inventory of the process vessels used by Limetree Bay Refinery in its operation of the Facility.
- iii. For substances and other materials that are located at the Facility but outside of process vessels, within sixty (60) days of the Effective Date of this Consent Order, RTP shall complete and submit to EPA a final comprehensive inventory of any and all hazardous substances as defined pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9601-9675, and regulated substances and/or extremely hazardous substances under the CAA, including identifying the quantities and locations of such materials at the Facility, such as warehouses and any other locations at the Facility.
- iv. A duly authorized officer of Respondent shall certify the above-referenced submissions by ioMosaic and RTP:

I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- e. Contractor(s). If Respondent seeks to hire a different or additional contractor for any work to be performed under this Consent Order, Respondent shall submit to EPA for review and approval the name and qualifications of a qualified independent contractor (or contractors if more than one is proposed) and describe the work such contractor would perform. Respondent shall propose contractor(s) who will be available to perform the actions described in this Consent Order promptly, and it may include in its proposal a revised schedule for the completion of the new contractor's work. EPA shall review the qualifications and availability of Respondent's proposed contractor(s), as well as any proposed revised schedule for completion of the work. EPA may disapprove any contractor based on its qualifications, and, if so, Respondent shall propose other contractor(s) within seven (7) days of receiving EPA's disapproval in writing. If a proposed revised schedule is submitted, the provisions of Subparagraph 44.c.v. shall apply.

- f. Final Report. Within thirty (30) days of the completion of the activities required pursuant to Subparagraphs a. – e., Respondent shall submit a Final Report to EPA. The Final Report shall detail the actions conducted at the Facility pursuant to these Subparagraphs of this Consent Order and provide documentation regarding those actions, including the inventory reports required by Subparagraph d. The Final Report shall include the certification set forth in Subparagraph d., above, signed by a duly authorized officer of Respondent.
45. EPA will review the documentation submitted pursuant to Paragraph 44, above, including the Final Report. If EPA determines that the actions taken or documentation submitted are insufficient to demonstrate compliance with the requirements of this Consent Order, EPA will so notify Respondent in writing describing the reasons for its determination. Respondent shall undertake all actions directed by EPA in such written notice within thirty (30) days of Respondent's receipt of EPA's written comments. To the extent additional time is needed to undertake any additional actions directed by EPA, Respondent shall promptly advise EPA in writing of the need and basis for such additional time, and EPA will, in writing, approve or disapprove of Respondent's request for additional time.
46. Respondent shall provide EPA and its representatives, including contractors, with access to the Facility for the purpose of assessing Respondent's compliance with this Consent Order and with the CAA, including for EPA to conduct any monitoring that EPA determines to be necessary, such as air monitoring, and to take photographs at the Facility related to work to be performed under this Consent Order. Respondent shall also provide EPA and its representatives, including contractors, with access to all non-privileged records relating to Respondent's implementation of this Consent Order.
47. All plans and schedules that are approved by EPA pursuant to this Consent Order shall be deemed incorporated into and enforceable under this Consent Order.
48. Respondent shall preserve all documents and information relating to the activities carried out pursuant to this Consent Order for six (6) years after completion of the work required by this Consent Order. At the end of the six (6)-year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with electronic copies of such non-privileged documents and information.
49. All documents submitted by Respondent to EPA in the course of implementing this Consent Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law, or otherwise determined by EPA to be confidential or subject to restricted access under applicable law.

## VI. WRITTEN NOTICES

50. Information required to be submitted to EPA pursuant to this Consent Order shall be sent, electronically, to:

Doug Kodama  
U.S. Environmental Protection Agency  
Superfund and Emergency Management Division  
Response and Prevention Branch  
2890 Woodbridge Avenue  
Edison, NJ 08837  
(732) 906-6905  
[Kodama.doug@epa.gov](mailto:Kodama.doug@epa.gov)

and

Jean H. Regna, Esq.  
U.S. Environmental Protection Agency  
Office of Regional Counsel  
290 Broadway - 17th Floor  
New York, NY 10007-1866  
(212) 637-3164  
[regna.jean@epa.gov](mailto:regna.jean@epa.gov)

51. Information required to be submitted to Respondent pursuant to this Consent Order shall be sent to the following:

Fermin Rodriguez  
Vice President & Refinery Manager  
Port Hamilton Refining and Transportation LLLP  
1 Estate Hope  
Christiansted, VI 00820-5652  
[fermin.rodriquez@phrt.com](mailto:fermin.rodriquez@phrt.com)

Matthew W. Morrison, Esq.  
Pillsbury Winthrop Shaw Pittman  
1200 Seventeenth Street, NW  
Washington, DC 20036  
[matthew.morrison@pillsburylaw.com](mailto:matthew.morrison@pillsburylaw.com)

Gary Steinbauer, Esq.  
Babst Calland Clements & Zomnir, P.C.  
Two Gateway Center, 6th Floor  
Pittsburgh, PA 15222  
[gsteinbauer@babstcalland.com](mailto:gsteinbauer@babstcalland.com)

## VII. STIPULATED PENALTIES

52. For each day that Respondent fails to comply with any of the terms or provisions of Paragraphs 44 - 46, above, EPA may assess, and if so, Respondent shall pay, stipulated penalties in accordance with the terms below. Stipulated penalties shall begin to accrue on the day that performance is due or a violation occurs, and they shall continue to accrue until the noncompliance is corrected. EPA will provide written notice of those violations for which EPA is assessing stipulated penalties; nevertheless, penalties shall accrue from the day a violation of this Consent Order commences. Payment shall be due within thirty (30) days of receipt of a demand for payment from EPA, and the demand shall provide payment instructions. Stipulated penalties shall accrue in the following amounts:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$5,000	31st day and beyond

53. Respondent shall pay interest on any amounts overdue under Paragraph 52. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of the due date.
54. In the event that the Parties disagree as to whether Respondent has fully complied with the provisions of Paragraphs 44 - 46 of this Consent Order, the Parties will meet and confer within seven (7) days (or any other, mutually agreed upon period) to attempt to resolve any disagreement over compliance with this Consent Order. The determination of whether Respondent has fully complied with the provisions of Paragraphs 44 - 46, above, shall be vested within the sole discretion of a Deputy Director of the Superfund and Emergency Management Division of EPA Region 2, who may waive any portion of stipulated penalties that may have accrued pursuant to this Consent Order.
55. Respondent's payment of stipulated penalties pursuant to Paragraph 52, above, shall not extinguish, waive, or otherwise affect Respondent's obligations to comply with the requirements of Paragraphs 44 - 46.
56. The stipulated penalties provisions of this Consent Order do not preclude EPA from pursuing any other remedies or sanctions that are available to EPA because of Respondent's alleged failure to comply with this Consent Order, including, without

limitation, civil judicial or administrative penalties under Section 113 of the CAA, 42 U.S.C. § 7413, currently up to \$57,617 per day for each violation.

57. **Tax Identification.** For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of the work set forth in Paragraphs 44-46 is restitution, remediation, or required to come into compliance with the law.
58. **Tax Reporting.** Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS"), annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 ("Request for Taxpayer Identification Number and Certification") or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. §§ 6723 and 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:
- a. Respondent shall complete an IRS Form W-9 which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
  - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
  - c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at [wise.milton@epa.gov](mailto:wise.milton@epa.gov), within thirty (30) days after the Effective Date of this Consent Order, and EPA recommends encrypting IRS Form W-9 email correspondence; and
  - d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within thirty (30) days after the Effective Date, then Respondent, using the same email address identified in Subparagraph c., shall further:
    - i. notify EPA's Cincinnati Finance Center of this fact, via email, within thirty (30) days after the thirty (30) days after the Effective Date of this Consent Order; and

- ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

VIII. EFFECT OF SETTLEMENT,  
RESERVATION OF RIGHTS, AND JUDICIAL REVIEW

59. Respondent does not admit EPA's Findings of Fact, Conclusions of Law, or any other allegations set forth in this Consent Order, but as set forth in Paragraph 43, Respondent voluntarily agrees to comply with the requirements of this Consent Order.
60. This Consent Order shall not relieve Respondent of its obligation to comply with all applicable federal, U.S. Virgin Islands Territory, and local laws, regulations, and other legal requirements, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, U.S. Virgin Islands Territory, or local permit. This Consent Order is not intended to be, nor shall it be construed to be, a permit.
61. EPA reserves its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, that may relate to Respondent's failure to comply with any of the requirements of this Consent Order. This Consent Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, that EPA has under any other statutory, regulatory, or common law authority of the United States.
62. This Consent Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Consent Order, nor does it limit the rights of the United States to obtain penalties or injunctive relief under the CAA or other applicable federal law or regulation.
63. The Parties acknowledge and agree that EPA's approval of this Consent Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, U.S. Virgin Islands Territory, or federal laws and regulations.
64. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, extremely hazardous substance, or other substance on, at, or from the Facility. EPA reserves the right to bring an action against Respondent assessing or seeking penalties and/or other relief for any violations, including, without limitation, the alleged violations referred to in the EPA's Findings of Fact and Conclusions of Law set forth above. This Consent Order shall not constitute nor be construed as a release of any liability that Respondent or any other person has under the CAA, CERCLA, 42 U.S.C. §§ 9601- 9675, or any other law.

65. Nothing herein shall be construed as an extension of time for complying with any statutory or regulatory requirement under the CAA or any other law.
66. Respondent waives its rights to judicial review of this Consent Order.
67. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppels, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.
68. Neither EPA nor the United States, by issuance of this Consent Order, assumes any liability for any acts or omissions by Respondent or its employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Consent Order, nor shall EPA or the United States be held as a party to any contract entered into by Respondent or by its employees, agents, contractors, or consultants.
69. The Parties shall bear their own costs and fees in this action, including attorney fees.
70. Each undersigned representative of the Parties to this Consent Order certifies that he, she, or they is fully authorized by the party represented to enter into the terms and conditions of this Consent Order and to execute and bind that party to it under the law.
71. The effective date of this Consent Order shall be the date of signature by EPA ("Effective Date").

For U.S. Environmental Protection Agency:

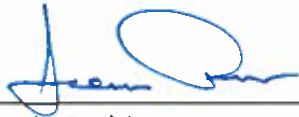
\_\_\_\_\_  
Pat Evangelista, Director  
Superfund and Emergency Management  
Division, EPA Region 2

Date: \_\_\_\_\_



In the Matter of Port Hamilton Refining and Transportation LLLP  
Index No. CAA-02-2024-1006

For Respondent  
Port Hamilton Refining and Transportation LLLC

A handwritten signature in blue ink, appearing to read "Fermin Rodriguez", is written over a horizontal line.

Fermin Rodriguez  
Vice President and Refinery Manager

Date: 8/22/24