UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY

NEW YORK, NY 10007-1866

VIA CERTIFIED MAIL AND EMAIL

Robert Rosselli, President
Brooklyn Resource Recovery, Inc.
5811 Preston Court
Brooklyn, New York 11234
robertrosselli@brooklynresource.com

Re: Request for Information Pursuant to Section 114 of the Clean Air Act, Reference Number: CAA-02-2021-1453

Dear Mr. Rosselli:

The Clean Air Act, 42 U.S.C. §§ 7401, *et seq.* (CAA or the Act), at Section 114, 42 U.S.C. § 7414, authorizes the U.S. Environmental Protection Agency (EPA) to require submittal of information, among other things, to assess compliance with the Act and regulations promulgated pursuant to the Act. In accordance with Section 114(a) of the Act, this Request for Information (Information Request) requires Brooklyn Resource Recovery, Inc. (BRR) to submit information with respect to its facility, located at 5811 Preston Court, Brooklyn, New York 11234 (Scrapyard).

Based on the BRR response to EPA's June 11, 2020 Information Request, EPA is concerned that BRR's Scrapyard is operating in violation of the New York State Implementation Plan and underlying New York State Department of Environmental Conservation regulations, including those regarding Reasonably Available Control Technology for major facilities, described at 6 NYCRR § 212-3, the Title V State Permits, described at 6 NYCRR § 201-6, and New Source Review for new and modified facilities, described at 6 NYCRR § 231-5.

Pursuant to Section 114 of the Act, this Information Request requires BRR to submit all of the information described in Enclosure 1. Failure to submit the requested information is a violation of Section 114 of the Act, and may result in an order to comply, an order for administrative penalties, or a civil action for penalties and injunction requiring compliance pursuant to EPA's enforcement authority provided in Section 113(a) of the Act. *See* Enclosure 2. In accordance with Section 113(c)(2)(A) of the Act, any person who knowingly makes any false statement, representation, or certification, or who omits material information from or knowingly alters, conceals, or fails to file a response to this Information Request, may be subject to criminal action.

You may choose to assert a business confidentiality claim covering all or part of the information submitted. You may not, however, withhold any information on that basis. In order for EPA to consider a claim of business confidentiality for one or more of the documents submitted by you, a cover sheet, stamped or typed legend, or other suitable form of notice must be placed on or attached to the document, with language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by EPA. For each confidentiality claim, the date or occurrence of any event after which the information can be released should be indicated, if applicable. If no confidentiality claim accompanies the information received by EPA, all information submitted as part of your response may be made available to the public without further notice to you. EPA will disclose information covered by a confidentiality claim only to the extent allowed by, and in accordance with, the procedures set forth in EPA's public information regulations, 40 C.F.R. §§ 2.201, *et seq.* (*See* 41 Fed. Reg. 36902 (Sept. 1, 1976)).

In order to comply fully with this Information Request, your response must include a completed Certification of Response (*see* Attachment to Enclosure 1), notarized by a notary public, and signed by you or another officer of your company. Your responses to the questions in Enclosure 1, including all supporting documents and the Certification of Response, must be scanned and submitted by email to Mr. Robert Buettner of the EPA, in accordance with the schedule set forth in Enclosure 1, at his email address below:

Robert Buettner, Chief
Air Compliance Branch
U.S. Environmental Protection Agency
Region 2 Office
Buettner.Robert@epa.gov

The requested information shall be submitted to EPA within the timelines indicated for the specific requests in Part III of Enclosure 1. You may request an extension of any timeline to respond by email to Mr. Buettner at his email address above. Please include the reason(s) for the delay in responding and include the requested subsequent date for responding. In order to allow sufficient time for review, any such request for an extension of time must be made at least ten (10) calendar days prior to the date on which the requested information is due to EPA. An extension of time will be effective only if granted by EPA by email.

Please include the above-cited Reference No. CAA-02-2021-1453 in any and all of your response(s) to this Information Request. Further, if within one year of the date of this Information Request, you obtain information different from, or in addition to, the information provided, or if there is any change affecting the information submitted, you must notify EPA and submit the relevant information no later than twenty (20) calendar days after such information becomes available.

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You may address any questions concerning this matter to Joseph Cardile in the EPA Region 2 Air Compliance Branch by email at cardile.joseph@epa.gov or by phone at 212-637-4054. We appreciate and look forward to your prompt response.

Sincerely,

ROBERT BUETTNER Digitally signed by ROBERT BUETTNER Date: 2021.03.22 13:57:03 -04'00' *for*

Dore LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Christian Rosselli, Senior Manager
christianrosselli@brooklynresource.com

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ENCLOSURE 1

INFORMATION REQUEST LETTER PURSUANT TO SECTION 114 OF THE CLEAN AIR ACT, REGARDING THE BROOKLYN RESOURCE RECOVERY SCRAPYARD AT 5811 PRESTON COURT, BROOKLYN, NEW YORK 11234

Pursuant to Section 114 of the Clean Air Act, BRR shall supply the requested information below. The requested information must be submitted in accordance with these instructions and the schedules set forth in Part III, below, unless EPA grants an extension of time to respond in writing.

Part I: Instructions

1. Provide all responsive documents in Portable Document Format (PDF) or similar format, unless otherwise requested in specific questions. If the PDFs are scanned images, perform at least Optical Character Recognition for "image over text" to allow the document to be searchable. Submitters providing secured PDFs should also provide unsecured versions for EPA use in repurposing text.

2. When specific questions request data in electronic spreadsheet form, provide the data and corresponding information in editable Excel format, and not in image format. If Excel formats are not available, then the format should allow for data to be used in calculations by a standard spreadsheet program such as Excel.

3. Provide electronic submissions on physical media such as compact disk, flash drive, or another similar item.

4. Provide a table of contents for each compact disk or flash drive containing electronic documents submitted in response to our request so that each document can be accurately identified in relation to your response to a specific question. *We recommend the use of electronic file folders organized by question number*. In addition, each compact disk or flash drive should be labeled appropriately (*e.g.*, Company Name, Disk 1 of 4 for Information Request Response, Date of Response).

5. Emission data obtained through Section 114 of the CAA is ***not*** considered confidential business information (CBI), pursuant to 42 U.S.C. § 7414(c) and 40 C.F.R. § 2.301(a)(2)(i). Any information claimed as CBI must be submitted on separate disks/drives apart from the non-confidential information. This will facilitate appropriate records management and appropriate handling and protection of the CBI.

6. Certify that the attached files have been scanned for viruses and indicate what program was used.

7. If you have no information or documents responsive to a request, please so state in your response.

8. Where documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information is not available or in your possession and identify any source that either possesses or is likely to possess such information.

9. To the extent that a document is responsive to more than one request, please so state and provide only one copy of the document.

10. All terms used in this information request have their ordinary meaning, unless such terms are defined in the CAA, 42 U.S.C. §§ 7401, *et seq.*

Part II: Definitions

All terms used in this Information Request will have their ordinary meaning, unless such terms are defined in the Act, 42 U.S.C. §§ 7401, *et seq.*, or other CAA implementing regulations. Where reference is made to the EPA regulatory provisions, you should also apply the applicable federally-approved state provisions when appropriate. Additional terms are defined below.

A. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these.

B. The term "Facility" shall mean the BRR Scrapyard located at 5811 Preston Court, Brooklyn, New York.

C. The terms "you," "your," or "BRR" mean the following: the addressee of this Information Request, Brooklyn Resource Recovery, Inc.

Part III: Specific Information Request

Information You Are Required to Submit to EPA: Emissions Testing

Provide the following information regarding your Facility within the timelines indicated for the specific requests below.

BRR must respond to this information request by performing testing at the Facility pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a). BRR must submit a test plan, conduct testing, and submit all other information requested in accordance with the schedule specified below:

Submit testing protocol	No later than 90 days after receipt of this request
Notification of Intent to Test	No later than 21 days before testing
Complete testing	Within 180 days of receipt of this request
Submit Testing Report	Within 30 days of completion of testing

1. No later than ninety (90) calendar days after receipt of this request, BRR shall submit to EPA for review and approval, an emission testing protocol that includes testing for the following pollutants with their associated methods:
    a. The total gaseous organic compound emission rate as volatile organic compounds (VOC) using EPA Reference Methods 1-4 and Method 25A in 40 C.F.R Part 60, Appendix A;
    b. Volatile organic hazardous air pollutant emission rate using EPA Reference Methods 1-4 and 18 in 40 C.F.R. Part 60, Appendix A;
    c. Methane and ethane emission rates using EPA Reference Methods 1-4 and 18 in 40 C.F.R. Part 60, Appendix A;
    d. Particulate Matter emission rate using EPA Reference Methods 1-4 and Method 5 in 40 C.F.R. Part 60, Appendix A;
    e. Metals emission rate using EPA Reference Methods 1-4 and Method 29 in 40 C.F.R. Part 60, Appendix A; and
    f. Hexavalent chromium emission rate, using EPA Reference Methods 1-4 in 40 C.F.R. Part 63, Appendix A and Method 306 in 40 C.F.R. Part 63, Appendix A.

2. The emission testing protocol shall completely describe the methods and procedures, equipment specification for testing, and all relevant operating parameters. The protocol shall also include the following:
    a. A detailed description of the capture system, including any temporary enclosures consistent with EPA Reference Method 204, to be used during emission testing. The description shall include:
        i. photographs and/or drawings of the facility's process equipment layout in operation;
        ii. what equipment or features will be enclosed by the temporary enclosure and what equipment or features will not be enclosed by the temporary enclosure;

iii. how the temporary enclosure interfaces with process equipment;

b. Provide the flow rate of the air system that will be used by the capture system, in standard cubic feet per minute (scfm);
c. Identify the procedures that will be used to minimize uncaptured emissions; and
d. Identify the monitoring measures that BRR will use to verify that emissions are not escaping the capture system.

3. BRR shall also submit the protocol via email to cardile.joseph@epa.gov and to lynes.carol@epa.gov. EPA will provide approval and/or comments to be addressed on the testing protocol via email.

4. Within one-hundred eighty (180) calendar days after receipt of this request, BRR must perform emission testing of its hammermill shredder pursuant to the EPA-approved protocol.

5. During all emission testing conducted pursuant to paragraph 4 above, BRR shall, at a minimum, monitor and record the operating parameters of its hammermill shredder, including metal feed rate, water flow rates, shredder amperage, mass of autos and mass of non-auto material shredded for each test run, and average flow rate of air system used for the capture system in scfm.

6. During all emission testing conducted pursuant to paragraph 4, BRR shall operate its hammermill shredder at a minimum of 90% of maximum production capacity and shall utilize end-of-life-vehicles (ELV) to light iron and other recyclable metal ratio of 1:1 (50% ELVs – 50% other scrap by gross tons) +/- 5.0%.

7. During all emission testing conducted pursuant to paragraph 4, BRR shall operate its hammermill shredder and emission capture and collection system in a manner such that no visible emissions from the shredder and emission capture and collection system are emitted to the atmosphere, without first passing through the measurement equipment and the downstream exhaust stack.

8. At least twenty-one (21) calendar days prior to the planned testing, BRR shall provide notification to EPA of the date it intends to perform emission testing. BRR shall provide this notice via email to cardile.joseph@epa.gov and lynes.carol@epa.gov.

9. Within thirty (30) calendar days after the completion of the testing, BRR shall submit a complete report of the emissions testing, including, at minimum, the following:

a. Summary of Results
   i. results of the above-specified emission test(s);
   ii. process and control equipment data recorded during the test(s);
   iii. discussion of any errors that occurred during testing;
   iv. discussion of any deviations from the reference test methods or other problems encountered during the test(s); and
   v. data on production rate during testing.

b. Facility Operations

i. operating parameters of any control equipment in operation during the test(s); and
ii. facility operating parameters and data, including an explanation of how the operating parameters demonstrate that the process units were operating at greater than 90% production capacity at the time of the test(s).

c. Sampling and Analytical Procedures
   i. sampling port location(s) and dimensions of cross-section;
   ii. sampling point description, including labeling system;
   iii. brief description of sampling procedures, including equipment and diagram;
   iv. description of sampling procedures (planned or accidental) that deviated from any standard method;
   v. brief description of analytical procedures, including calibration;
   vi. description of analytical procedures (planned or accidental that deviated from any standard method; and
   vii. quality control/quality assurance procedures, tests, and results.

d. Appendix
   i. complete results with example calculations;
   ii. raw field data;
   iii. laboratory report, with signed chain-of-custody forms;
   iv. calibration procedures and results;
   v. raw process and equipment data, signed by a plant representative;
   vi. test log(s); and
   vii. testing participants and titles.

ATTACHMENT TO ENCLOSURE

CERTIFICATION OF RESPONSE

State of _____:

County of _____:

I certify, under penalty of law, that I have personally examined and am familiar with the information submitted in response to the Information Request Letter and all documents submitted with this response, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted with this response are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that for one year from the date of the Information Request Letter, I am under an obligation to supplement my response to the Information Request Letter if any additional information relevant to the matters should become known or available to me.

_____
NAME (print or type)

_____
TITLE (print or type)

_____
SIGNATURE

Sworn to before me this ___ day of _____, 2021

_____
Notary Public

shall be submitted to the President and to the Congress not later than 48 months after such date of enactment. In the report, the Commission shall make recommendations with respect to the appropriate use of risk assessment and risk management in Federal regulatory programs to prevent cancer or other chronic health effects which may result from exposure to hazardous substances. The Commission shall cease to exist upon the date determined by the Commission, but not later than 9 months after the submission of such report.

"(g) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to carry out the activities of the Commission established by this section."

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

§ 7413. Federal enforcement

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obliga-

tions to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies;[1]

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:

(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced (A) during any period of federally assumed enforcement, or (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such person has violated, or is in violation of, such requirement or prohibition.

(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).

(3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411(e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475(a) of this title (relating to preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a(a) or 7661b(c) of this title (relating to permits), or any requirement or prohibition of subchapter IV–A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring de-

[1] So in original. The semicolon probably should be a comma.

vice or method required to be maintained or followed under this chapter[2]

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV–A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury—

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602(e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued (i) during any period of federally assumed enforcement, or (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

(B) has violated or is violating any other requirement or prohibition of this subchapter or

[2] So in original. Probably should be followed by a comma.

subchapter III, IV–A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

(C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 7604(a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence

(including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607(a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604(a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV–A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,[3] or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

(July 14, 1955, ch. 360, title I, § 113, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1686; amended Pub. L. 92–157, title III, § 302(b), (c), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93–319, § 6(a)(1)–(3), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title I, §§ 111, 112(a), Aug. 7, 1977, 91 Stat. 704, 705; Pub. L. 95–190, § 14(a)(10)–(21), (b)(1), Nov. 16, 1977, 91 Stat. 1400, 1404; Pub. L. 97–23, § 2, July 17, 1981, 95 Stat. 139; Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672.)

CODIFICATION

Section was formerly classified to section 1857c–8 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), finding of violation, notice, compliance order, civil action, State failure to enforce plan, and construction or modification of major stationary sources; in subsec. (b), violations by owners or operators of major stationary sources; in subsec. (c), penalties; in subsec. (d), final compliance orders; and in subsec. (e), steel industry compliance extension.

1981—Subsec. (e). Pub. L. 97–23 added subsec. (e).

1977—Subsec. (a)(5). Pub. L. 95–95, § 111(a), added par. (5).

Subsec. (b). Pub. L. 95–95, § 111(b), (c), substituted "shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever such person" for "may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person" in provisions preceding par. (1), inserted references to subsec. (d)(5) of this section, sections 7419 and 7620 of this title, and regulations under part in par. (3), inserted reference to subsec. (d) of this section in par. (4), added par. (5), and, in provisions following par. (5), authorized the commencement of civil actions to

[3] So in original. The comma probably should not appear.

recover noncompliance penalties and nonpayment penalties under section 7420 of this title, expanded jurisdictional provisions to authorize actions in districts in which the violation occurred and to authorize the district court to restrain violations, to require compliance, to assess civil penalties, and to collect penalties under section 7420 of this title, enumerated factors to be taken into consideration in determining the amount of civil penalties, and authorized awarding of costs to the party or parties against whom the action was brought in cases where the court finds that the action was unreasonable.

Subsec. (b)(3). Pub. L. 95–190, § 14(a)(10), (11), inserted "or" after "ozone);", and substituted "7624" for "7620", "conversion), section" for "conversion) section", and "orders), or" for "orders) or".

Subsec. (c)(1). Pub. L. 95–95, § 111(d)(1), (2), substituted "any order issued under section 7419 of this title or under subsection (a) or (d) of this section" for "any order issued by the Administrator under subsection (a) of this section" in subpar. (B), struck out reference to section 119(g) (as in effect before the date of the enactment of Pub. L. 95–95) in subpar. (C), and added subpar. (D).

Subsec. (c)(1)(B). Pub. L. 95–190, § 14(a)(12), inserted "or" after "section,".

Subsec. (c)(1)(D). Pub. L. 95–190, § 14(a)(13), substituted "1977 subsection" for "1977) subsection" and "penalties), or" for "penalties) or".

Subsec. (c)(3). Pub. L. 95–95, § 111(d)(3), added par. (3).

Subsec. (d). Pub. L. 95–95, § 112(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 95–190, § 14(a)(14), substituted "to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order" for "an order for any stationary source" and "such requirement" for "any requirement of an applicable implementation plan".

Subsec. (d)(1)(E). Pub. L. 95–190, § 14(a)(15), inserted provision relating to exemption under section 7420(a)(2)(B) or (C) of this title, provision relating to noncompliance penalties effective July 1, 1979, and reference to subsec. (b)(3) or (g) of section 7420 of this title.

Subsec. (d)(2). Pub. L. 95–190, § 14(a)(16), inserted provisions relating to determinations by the Administrator of compliance with requirements of this chapter of State orders issued under this subsection.

Subsec. (d)(4)(A). Pub. L. 95–190, § 14(a)(17), substituted "title) upon" for "title upon".

Subsec. (d)(5)(A). Pub. L. 95–190, § 14(a)(18), substituted "an additional period for" for "an additional period of".

Subsec. (d)(8). Pub. L. 95–190, § 14(a)(19), struck out reference to par. (3) of this subsection.

Subsec. (d)(10). Pub. L. 95–190, § 14(a)(20), substituted "in effect" for "issued", "Federal" for "other", and "and no action under" for "or".

Subsec. (d)(11). Pub. L. 95–190, § 14(a)(21), substituted "and in effect" for "(and approved by the Administrator)".

1974—Subsec. (a)(3). Pub. L. 93–319, § 6(a)(1), inserted reference to section 1857c–10(g) of this title (relating to energy-related authorities).

Subsecs. (b)(3), (c)(1)(C). Pub. L. 93–319, § 6(a)(2), (3), inserted reference to section 1857c–10(g) of this title.

1971—Subsec. (b)(2). Pub. L. 92–157, § 302(b), inserted "(A)" before "during" and ", or (B)" after "assumed enforcement".

Subsec. (c)(1)(A). Pub. L. 92–157, § 302(c), inserted "(i)" before "during" and ", or (ii)" after "assumed enforcement".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

§ 7414. Recordkeeping, inspections, monitoring, and entry

(a) Authority of Administrator or authorized representative

For the purpose (i) of developing or assisting in the development of any implementation plan under section 7410 or section 7411(d) of this title, any standard of performance under section 7411 of this title, any emission standard under section 7412 of this title,,[1] or any regulation of solid waste combustion under section 7429 of this title, or any regulation under section 7429 of this title (relating to solid waste combustion), (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this chapter (except a provision of subchapter II of this chapter with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—

(1) the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title with respect to a provision of subchapter II of this chapter) on a one-time, periodic or continuous basis to—

(A) establish and maintain such records;

(B) make such reports;

(C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;

(D) sample such emissions (in accordance with such procedures or methods, at such lo-

[1] So in original.