**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

December 8, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7007 3020 0002 5102 0878

CORPORATION SERVICE COMPANY
DBA CSC – LAWYERS INCO
Registered Agent for American Acryl N.A., L.L.C.
211 E. 7th Street, Suite 620
Austin, TX 78701

Re: Complaint and Notice of Opportunity for Hearing
Docket No. CAA-06-2011-3302

Dear Madam/Sir:

Enclosed is a Complaint and Notice of Opportunity for Hearing (Complaint) issued to American Acryl N.A., L.L.C. (American Acryl), 12100 Port Road, Pasadena, Harris County, Texas, pursuant to the Clean Air Act (CAA), as amended. This Complaint alleges that American Acryl failed to comply with the General Duty Clause of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1). Based on this violation, a penalty of $37,500 is proposed.

Please refer to Section of the Complaint entitled "Opportunity to Request a Hearing" which requires your response to the Complaint within 30 days of its receipt. If a response is not submitted within 30 days, a Default Order may be issued for full payment of the penalty within 60 days.

The following document is also enclosed to assist you in understanding the Complaint:

> The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule, 40 C.F.R. Part 22.

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If you have any questions, please contact Mr. Carlos Zequeira, Senior Assistant Regional Counsel, EPA Region 6, in writing at the above address or by telephone at (214) 665-8053.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosures

cc: George O. Wilkinson, Esq., Partner
Vinson & Elkins, L.L.P.
First City Tower
1001 Fannin Street, Suite 2500
Houston, TX 77002-6760

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2010 DEC -8 PM 3:59

REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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|---|---|---|
| IN THE MATTER OF: | § | |
| | § | EPA Docket Number: |
| | § | CAA-06-2011-3302 |
| AMERICAN ACRYL N.A., L.L.C, | § | |
| Pasadena, Texas, | § | |
| | § | **COMPLAINT AND** |
| | § | **NOTICE OF OPPORTUNITY** |
| Respondent. | § | **FOR HEARING** |
| | § | |

## I.
## STATEMENT OF AUTHORITY

This Complaint and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to Section 113(d) of the Clean Air Act, as amended (the "Act"), 42 U.S.C. § 7413(d), and 40 C.F.R. §§ 22.13 and 22.34(b). The Complainant in this action is the Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency ("EPA"), Region 6, the person to whom the authority to issue such Complaints has been delegated.

Complainant will show that American Acryl N.A., L.L.C. (hereinafter "Respondent") violated the General Duty Clause of Section 112(r)(1) of the Act, 42 U.S.C. § 7413(r)(1), in the operation of an acrylic acid plant in its Port Road facility located in Pasadena, Harris County, Texas.

## II.
## STATUTORY AND REGULATORY BACKGROUND

1. This enforcement proceeding is a civil administrative action initiated by EPA pursuant to Section 113(d) of the Clean Air Act, as amended ("CAA" or "the Act"), 42 U.S.C. § 7413(d). This proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing [hereinafter "Complaint"] against Respondent pursuant to 40 C.F.R. §§ 22.13 and 22.34(b).

2. This Complaint alleges that American Acryl violated the General Duty Clause of Section 112(r)(1) of the Act, 42 U.S.C. § 7413(r)(1), in the operation of an acrylic acid plant located in its Port Road facility located in Pasadena, Harris County, Texas ("the Facility").

## III.
## GENERAL ALLEGATIONS

3. The Respondent is a State of Delaware limited liability corporation doing business in the State of Texas and is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

4. At all relevant times, Respondent owned and operated an acrylic acid plant facility located in Harris County, Texas.

5. Pursuant to Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), it is the objective of the regulations and programs authorized under this subsection to prevent the accidental release of any substance listed pursuant to CAA Section 112(r)(3) or any other extremely hazardous substance[1]. Additionally, the owners and operators of stationary sources producing, processing, handling or storing such listed or extremely hazardous substances have a general duty to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

6. Pursuant to CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design equipment, work practice and operational requirements to prevent accidental releases of regulated substances. Such regulations are promulgated in 40 C.F.R. Part 68.

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[1] EPA's Guidance for Implementation of the General Duty Clause – Clean Air Act Section 112 (r)(1), dated May 2000, in its footnote 3 on page 10, states that: "Although there is no definition for extremely hazardous substances, the legislative history of the 1990 Clean Air Act Amendments suggests criteria which EPA may use to determine if a substance is extremely hazardous. The Senate Report stated the intent that the term 'extremely hazardous substance' would include any agent 'which may or may not be listed or otherwise identified by any Government agency which may as the result of the short –term exposures associated with releases to the air cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity' (Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989) - "Senate Report"). Further, the Senate Report states, 'the release of any substance which causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or which causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is extremely hazardous.' Senate Report at 211."

7. Respondent is the owner and operator of a stationary source producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) or extremely hazardous substances, as published or listed in the Emergency Planning and Community Right-to-Know Act of 1986 [42 USCA § 11001 et seq.] or otherwise identified as such due to its toxicity, reactivity, flammability, volatility, or corrosivity (see footnote 1 above).

8. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

9. "Stationary source" is defined in Section 112(r)(2)(C) of the Act and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (v) from which an accidental release may occur.

10. "Accidental release" is defined in Section 112(r)(2)(A) as "an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source."

11. "Process" shall mean any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process. 40 C.F.R. § 68.3.

12. On or about December 6, 2009, the Acrylic Acid unit was prepared for start up by site workers.

13. On or about December 9, 2009, at approximately 8:45 a.m., the American Acryl plant experienced an explosion and fire in the tank farm area of the purification section of the Acrylic Acid plant. The explosion destroyed TK-1124, the reflux tank for the water separation column (T-1105), which was used to store and decant toluene from water.

14. At approximately 8:47 a.m., the on-site incident commander requested activation of the site emergency alarm and an on-site shelter-in-place for headcount.

15. Two employees who were in close proximity to the explosion and fire were transported at approximately 9:20 a.m. to Southeast Memorial Hospital. The site's all clear alarm was activated at 11:10 a.m.

16. According to American Acryl's Tap Root Investigation Report (Tap Root Report) dated January 14, 2010, the explosion was the result of an oxygen level in TK-1124 that exceeded the explosive limit for the toluene held in the tank. The concentration of oxygen was elevated in the vapor space of TK-1124 at start-up above the approximately 10.5% minimum oxygen for combustion in the flammable range.

**COUNT 1 - <u>Respondent failed to maintain a safe facility by not taking such steps as are necessary to prevent an accidental release(s) of an extremely hazardous substance(s), as required by the General Duty Clause of Section 112(r)(1) of the Act, 42 U.S.C § 7412(r)(1).</u>**

17. Paragraphs 1 through 16 are realleged and incorporated by reference.

18. Pursuant to Section 112(r) of the Act, Respondent did not exercise its general duty to ensure a safe facility by not taking such steps as are necessary to prevent releases and minimize the consequences of accidental releases of extremely hazardous substances.

19. The start-up involved various problems from the beginning such as an improperly working screw feeder, an oxygen analyzer that did not function as intended, the control panel was not operating, and an oxygen level that went in and out of alarm approximately 150 times.

20. American Acryl's investigation team identified in their Tap Root Report that the oxygen environment needed for an explosion was present in TK-1124 from December 8, 2009 until December 9, 2009 when the explosion took place.

21. The December 9, 2009 incident was preventable.

22. Therefore, Respondent failed to comply with Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), by failing to maintain a safe facility and taking such steps as are necessary to prevent releases of an extremely hazardous substance.

**PROPOSED CIVIL PENALTY**

The proposed civil penalty has been determined in accordance with Section 113(d) of the Act, 42 U.S.C. § 7413(d), together with 40 C.F.R. Part 19, which authorize EPA to assess a civil administrative penalty of up to $25,000 per day of violation of Section 112(r) of the Act that occurs after January 12, 2009[2].

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2 The Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 authorizes the United States to commence an action to assess civil penalties of not more than $27,500 per day for each violation that occurs January 30, 1997 through March 15, 2004; $32,500 per day for each violation that occurs March 15, 2004 through January 12, 2009; and up to $37,500 per day for each such violation occurring after January 12, 2009.

For purposes of determining the amount of any civil penalty to be assessed, Section 113(e) of the Act, 42 U.S.C. § 7413(e), requires EPA to 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. To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Clean Air Act Stationary Source Civil Penalty Policy," dated October 25, 1991, together with its relevant appendices. This policy provides for a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. Attached to this Complaint is a copy of the Penalty Policy as well as the Penalty Calculation Worksheet which explains the reasoning behind the proposed penalty, as required by 40 C.F.R. § 22.14(a)(4)(i). As indicated on the attached Worksheet, Complainant proposes to assess a civil penalty in the amount of Thirty Seven Thousand Five Hundred Dollars ($37,500.00) against Respondent.

## OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing. Any request for a hearing must be in writing and must be filed with:

Regional Hearing Clerk (6RC-D)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

within thirty (30) days of service of this Complaint.

If Respondent does not intend to request a formal hearing but wishes to contest any material facts set forth in the Complaint, contends that the amount of the penalty proposed in the Complaint is inappropriate, or feels entitled to a judgment as a matter of law, a written Answer along with one copy to this Complaint must be filed with the Regional Hearing Clerk at the above address within thirty (30) days of service of said Complaint pursuant to 40 C.F.R. § 22.15(a). Copies of the Answer shall also be sent to:

Carlos A. Zequeira
Senior Assistant Regional Counsel (6RC-EA)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Telephone: (214) 665-8053
FAX: (214) 665-3177

and

Guadalupe Pesina, Enforcement Officer
U.S. Environmental Protection Agency, Region 6
Toxics Enforcement Section (6EN-AT)
1445 Ross Avenue
Dallas, TX 75202-2733
Telephone: (214) 665-8375
FAX: (214) 665-7446

The Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which Respondent has knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which Respondent disputes and basis for opposing the proposed penalty; and (3) whether a formal hearing is requested. Hearings held on the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of Practice, codified at 40 C.F.R. Part 22 (a copy of Part 22 is enclosed herein for your convenience).

If an Answer to this Complaint is not filed with the Regional Hearing Clerk within thirty (30) days of service, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 113(d)(2) of the Clean Air Act, as amended, 42 U.S.C. § 7413(d)(2). The proposed penalty shall become due and payable without further proceedings thirty (30) days after the default order becomes final under 40 C.F.R. § 22.27(c).

## SETTLEMENT CONFERENCE

EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Therefore, whether or not a formal hearing is requested, Respondent may confer informally with the EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to have a representative

appear at the conference, to be represented by counsel, or both. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Administrator, Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein. To explore the possibility of settlement in this matter, please address correspondence to Carlos A. Zequeira, at the address listed above or by telephone at (214) 665-8053.

Dated at Dallas, Texas on this 8th day of December, 2010.

John Blevins
Director
Compliance Assurance and
Enforcement Division

In the Matter of: American Acryl N.A., L.L.C.,
Docket No. CAA-06-2011-3302

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2010, the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing ("Complaint") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7007 3020 0002 5102 0878

CORPORATION SERVICE COMPANY
DBA CSC – LAWYERS INCO
Registered Agent for American Acryl N.A., L.L.C.
211 E. 7th Street, Suite 620
Austin, TX 78701

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7007 3020 0002 5102 0885

George O. Wilkinson, Esq.
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Sandra Hardy

Sandra Hardy
U.S. EPA Region 6
Dallas, Texas