



REGION 9

SAN FRANCISCO, CA 94105

Via Email: scubas@tst-inc.com

In Reply Refer to:

TST, Inc.
11601 S Etiwanda Ave
Fontana, CA, 92337

Sandra Cubas
EHS Manager
TST, Inc.
11601 S Etiwanda Ave
Fontana, CA, 92337

RE: Notification of Potential Enforcement Action for Violations of Section 112(r) of the Clean Air Act

Dear EHS Manager Sandra Cubas:

As you know, representatives from the U.S. Environmental Protection Agency, Region 9 ("EPA") conducted an inspection on June 6, 2023, of the TST, Inc. ("Company") facility located at 11601 S. Etiwanda Avenue Fontana, CA, 92337 ("Facility"). The purpose of the inspection was to determine compliance with requirements under the Emergency Planning and Community Right-to-Know Act ("EPCRA") sections 304-312, 42 U.S.C. §§ 11004-11022; the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") section 103, 42 U.S.C. § 9603; the Risk Management Program ("RMP") of section 112(r)(7), of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(7); and the General Duty Clause ("GDC") of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Based upon the information obtained during our investigation, EPA is prepared to initiate a civil administrative action against the Company to ensure compliance with federal law and assess a penalty pursuant to section 113 of the CAA, 42 U.S.C. § 7413. The anticipated administrative action includes violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.

After reviewing the Company's responses to EPA's previous information requests, EPA is considering the allegations described below against the Company. For each allegation, the corresponding area of concern ("AOC") mentioned in EPA's Inspection Report sent to the Facility on August 18, 2023, is provided below.

CAA, 40 C.F.R. Part 68 – RMP

- 1) **Hazard Assessment.** The Company did not adequately document its hazard assessment as follows:
- a) The Company did not use the most recent census data to estimate the population impacted by either the worst-case or alternative release scenarios, in violation of 40 C.F.R. § 68.30(c). (AOC 1)
 - b) The Company did not update or document that it reviewed its off-site consequence analysis every five years, in violation of 40 C.F.R. § 68.36(a). (AOC 2)
- 2) **Process Safety Information (“PSI”).** The Company had the following violations with its PSI:
- a) Consequences of deviations had not been developed, in violation of 40 C.F.R. § 68.65(c)(1)(v). (AOC 3)
 - b) Piping and instrumentation diagrams did not match field conditions, in violation of 40 C.F.R. § 68.65(d)(1)(ii). (AOC 4)
 - c) The U-1A form for the chlorine vaporizer was not available, in violation of 40 C.F.R. § 68.65(d)(2).¹ (AOC 5)
 - d) The Company did not document that certain equipment complied with recognized and generally accepted good engineering practices (“RAGAGEP”) or that existing equipment was designed, maintained, inspected, tested, and operating in a safe manner, in violation of 40 C.F.R. § 68.65(d)(2) and (3), specifically:
 - i) The National Fire Protection Association (“NFPA”) diamonds were not affixed to entry gates or doors associated with the Chlorine Vaporizer Building.² (AOC 6)
 - ii) Chlorine storage Tank No. 1 did not have a diked area and sump installed around the tank to contain the contents if a liquid chlorine release occurs, and the Facility did not provide documentation of alternative safeguards.³ (AOC 7)
 - iii) The gates and doors present in the chlorine storage area and Chlorine Vaporizer Building lacked panic hardware.⁴ (AOC 8)

¹ The American Society of Mechanical Engineers (“ASME”) Boiler and Pressure Vessel (“B&PV”) Code Section VIII UG-120 requires a data report to be prepared and available for each pressure vessel.

² Section 60.5.1.8.2.1 of NFPA 1 (2021) and Section 6.1.8.2.1(3) of NFPA 400 (2019) state, “Visible and hazard identification signs in accordance with NFPA 704 shall be placed at the following locations except where the AHJ has received a hazardous materials management plan and hazardous materials inventory statement in accordance with Section 1.11 and 1.12 and has determined that omission of such signs is consistent with safety: ... (3) At entrances to locations where hazardous materials are stored, dispensed, used, or handled in quantities requiring a permit.”

³ Section 6.1 of the Chlorine Institute Pamphlet 5 (2017) states, “All new stationary chlorine storage tanks should be installed in a diked area. The diked area should have a sloping floor leading to a sump. Specific procedures should be provided for emptying rainwater from the diked area. The diked area, including the sump, should be designed to hold the contents of 110% of the largest storage tank.”

⁴ Section 6.2.1.4.6 of the NFPA 400 (2019) states, “Doors serving high-hazard content areas with occupant loads in excess of five shall be permitted to be provided with a latch or lock only if the latch or lock is panic hardware or fire exit hardware complying with 11.2.1.7 of NFPA 5000.”

- iv) Chlorine Institute Emergency "C" Kits were not being inspected frequently.⁵ (AOC 9)
- v) There was no mechanical ventilation system in the chlorine vaporizer building.⁶ (AOC 10)
- vi) A damaged ground-fault electrical receptacle was present inside the chlorine vaporizer building.⁷ (AOC 11)
- vii) Piping supports above Chlorine Storage Tank No. 2 were severely corroded and broken⁸ (AOC 12).
- viii) Chlorine piping throughout the Facility was not adequately labeled.⁹ (AOC 13)

3) Process Hazard Analysis ("PHA"): The Facility did not adequately document its PHA as follows:

- a) The Facility's 2019 PHA listed external flooding as a possible risk, but the description says, "No more of a hazard than other similar facilities." However, the Facility has an above-average flooding risk for RMP facilities, according to a US Government Accountability Office climate change report.¹⁰ Thus, the Company did not adequately consider natural hazards in its PHA, in violation of 40 C.F.R. § 68.67(c)(5). (New AOC)
- b) The Company had inadequate PHA recommendation tracking. The due date for all but one recommendation was listed as July 1, 2020, in the PHA (and the other was July 1, 2021), but there were still incomplete recommendations as of July 2023, in violation of 40 C.F.R. § 68.67(e). (New AOC)

4) Training: Chlorine delivery truck drivers were not trained to operate the chlorine storage tank filling valves, in violation of 40 C.F.R. § 68.71(c). (AOC 16)

⁵ Section 3.4 of the Chlorine Institute Pamphlet 66 (2007) states, "An Emergency Kit C should be on site in a location sufficiently away from the tank car so it will be accessible during an emergency. The kit should be inspected frequently to ensure the equipment is ready for use."

⁶ Section 6.2.1.5 of NFPA 400 (2019) states, "Buildings or portions thereof in which explosive, flammable, combustible, corrosive or highly toxic dusts, mists, fumes, vapors or gases are, or might be emitted, shall be provided with mechanical exhaust ventilation or natural ventilation where natural ventilation can be shown to be acceptable for the materials stored." Additionally, Section 6.2.1.5.3 of NFPA 400 states, "Mechanical ventilation shall be at a rate not less than 1 ft³/min/ft² of floor area over the areas required to comply with Protection Levels 1 through Protection Levels 4."

⁷ Section 110.12(B) of NFPA 70 (2023) states, "...There shall be no damaged parts that adversely affect safe operation or mechanical strength of the equipment such as parts that are broken, bent, cut, or deteriorated by corrosion, chemical action, or overheating."

⁸ Process Industry Practice PNSC0011 (2015), Section 4.4.4.1 states, "Permanent supports, anchors and other restraints, including supplementary structural steel as required for supports shall be erected. Support steel shall be of structural quality without sharp corners or edges."

⁹ Section 3.1 of ASME A13.1 (2015) states that piping systems shall be provided with "[P]ositive identification of the contents by lettered legend, giving the name of the contents in full or abbreviated form. Arrows shall be used to indicate direction of flow. Where flow can be in both directions, arrows in both directions shall be displayed. Contents shall be identified by a legend with sufficient additional details such as temperature, pressure, etc., as are necessary to identify the hazard."

¹⁰ US Government Accountability Office February 2022 report, "Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change": <https://www.gao.gov/products/gao-22-104494>.

- 5) **Mechanical Integrity:** The chlorine piping had missing paint and surface corrosion was present in multiple locations, in violation of 40 C.F.R. § 68.73(e).¹¹ (AOC 14)
- 6) **Management of Change (“MOC”):** The Company was not properly implementing the MOC Program in accordance with policies and procedures, in violation of 40 C.F.R. § 68.75(a), (c), (d), and (e). (AOC 18)

CAA 112(r)(1) – General Duty Clause

- 7) **Design and Maintain a Safe Facility:** The following concerns were identified in violation of the General Duty Clause requirement to design and maintain a safe facility taking such steps necessary to prevent releases:
- a) Piping was suspended from other piping using ropes.¹² (AOC 15)
 - b) The hoists used to move material from the furnaces are adjacent to chlorine piping and were not being inspected in accordance with applicable RAGAGEP.¹³ (AOC 17)
 - c) The propane storage tank permit to operate was expired.¹⁴ (GDC AOC 1)
 - d) The propane storage tank nameplate was corroded and illegible.¹⁵ (GDC AOC 2)

¹¹ Section 10.8 of the Chlorine Institute Pamphlet 6 (2020) states, “A protective coating system (for example, an epoxy-based system) on the pipe should be considered to limit external corrosion. Painting specifications should consider the environment.” Also, Section 12.2 of the Chlorine Institute Pamphlet 6 (2020) states, “As part of a good overall preventative maintenance program, consideration should be given to ensuring that the following items are checked periodically and corrected as needed ... paint condition.” This section goes on to state “consideration should be given to repainting on a regular basis, with timing determined by individual site conditions. This will maximize pipe life and minimize leaks by minimizing external corrosion.”

¹² Manufacturers Standardization Society (MSS) Recommended Practice (RP)-58 (2009) Section 6.13 states, “Pipes shall not be suspended directly from each other unless formal calculations are performed and accepted by the responsible Piping Design Engineer. If no calculations have been made, the individual hanger for each horizontal pipe in a vertical bank shall have the load transmitted directly to the rods above, not the pipe.”

¹³ Section 16-2.1.5 of ASME B30.16 (2017) states that facilities should conduct and document an annual inspection of the hoists that includes fasteners for the following conditions: “... 2) evidence of loosening, 3) load blocks, suspension housings, hand chainwheels, chain attachments, clevises, yokes, suspension bolts, shafts, gears, bearings, pins, rollers, and locking and clamping devices for evidence of wear, corrosion, cracks, and distortion, 4) hook-retaining nuts or collars, and pins, welds, or rivets used to secure the retaining members for evidence of damage, 5) load sprockets, idler sprockets, drums, and sheaves for evidence of damage and wear, ... 13) welded link chain for gouges, nicks, weld spatter, corrosion, and distorted links. Slacken the chain and move the adjacent links to one side to inspect for wear at the contact points.”

¹⁴ California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 1 (Unfired Pressure Vessel Safety Orders), Article 5 (LP-Gas Systems), Section 470, Permit to Operate states, “(a) Except during the time a request for a permit remains unacted upon, no employer or employee shall use or cause to be used any pressure vessel for the storage or transportation of LP-Gas without first securing from the Division a permit to operate such container. (b) Permits to operate dispensing units, trap tanks, and skid tanks shall expire in not more than 3 years while the permit to operate transportation tanks, mobile fuel tanks, and storage tanks shall expire in not more than 5 years.”

¹⁵ ASME B&PV Code, Section VIII, Division 1, UG-119(a) states, “Nameplates shall be used on vessels except when markings are directly applied in accordance with UG-118. Nameplates shall be metal suitable for the intended service and shall bear the markings called for in UG-116.” Also, ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, UG-116 states that each pressure vessel nameplate shall include the official certification mark, name of the manufacturer, maximum allowable working pressure at temperature, minimum design metal temperature at working pressure, manufactures serial number and year built.

- e) The Facility is not inspecting the propane storage tank on a regular basis in accordance with applicable RAGAGEP.¹⁶ (GDC AOC 3)

Before filing a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint"), EPA is extending to the Company an opportunity to advise EPA of any other information that the Company believes should be considered before the filing of such a Complaint. Relevant information may include any evidence of reliance on compliance assistance, additional compliance tasks performed subsequent to the inspection, or financial factors bearing on the ability to pay a civil penalty. EPA has reviewed the documents included in the Company's previous transmittals. These documents do not need to be resubmitted.

Please note that, pursuant to regulations located at 40 C.F.R. Part 2, Subpart B, you are entitled to assert a business confidentiality claim covering any part of any submitted information as defined in 40 C.F.R. § 2.201(c). Asserting a business confidentiality claim does not relieve you from the obligation to respond fully to this letter. Failure to assert such a claim makes the submitted information subject to public disclosure upon request and without further notice to you, pursuant to the Freedom of Information Act, 5 U.S.C. §§ 552 et seq. Information subject to a business confidentiality claim may be available to the public only to the extent set forth in the above-cited regulation. EPA has authority to use the information requested herein in an administrative, civil, or criminal action. In addition, EPA has not waived any rights to take enforcement action for past or future violations.

Any penalty proposed for violation of the CAA will be calculated pursuant to EPA's June 2012 "Combined Enforcement Policy for Clean Air Act section 112(r)(1), the General Duty Clause, and Clean Air Act section 112(r)(7) and 40 C.F.R. Part 68, Chemical Accident Prevention Provisions"¹⁷ ("112(r) Penalty Policy"). This policy is subject to inflation adjustments under the Civil Monetary Inflation Adjustment Rule, as well as other potential changes in EPA guidance.¹⁸ EPA may, as a matter of enforcement discretion, consider a respondent's performance of a Supplemental Environmental Project ("SEP") as one factor in determining an appropriate settlement. A SEP is an environmentally beneficial project or activity that is not required by law, but that a respondent agrees to undertake as part of the settlement of an enforcement action. SEPs secure environmental and/or public health benefits in addition to those achieved by

¹⁶ Section 6.4.1 of the American Petroleum Institute (API) 510 (2014) states, "Unless justified by an RBI assessment, each aboveground vessels shall be given a visual external inspection at an interval that does not exceed the lesser of five years." Also, Section 6.5.1.1 of API 510 (2014) states, "Unless justified by a RBI assessment, the period between internal or on-stream inspections shall not exceed one half the remaining life of the vessel or 10 years, whichever is less. Whenever the remaining life is less than four years, the inspection interval may be the full remaining life up to a maximum of two years."

¹⁷ See www.epa.gov/sites/production/files/documents/112rcep062012.pdf

¹⁸ Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2024) and Transmittal of the 2024 Civil Monetary Penalty Inflation Adjustment Rule, <https://www.epa.gov/system/files/documents/2024-01/amendmentstotheepacivilpenaltypolicyinflation011524.pdf>; see also Penalty Policy Supplements Pursuant to the 2014 Civil Monetary Penalty Inflation Adjustment Rule, www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf

compliance with applicable laws. EPA evaluates proposed projects under the framework established in the Supplemental Environmental Projects Policy 2015 Update.¹⁹

*Your response to this letter must be made by a letter, signed by a person or persons duly authorized to represent the Company. Please send any such response **by email** to Bridget Johnson, Environmental Engineer, johnson.bridget@epa.gov, and Ylan Nguyen, Regional Counsel, Office of Regional Counsel, nguyen.ylan@epa.gov. **Please provide such information so that it is received no later than thirty (30) calendar days after receipt of this letter.** EPA anticipates filing a Complaint in this matter within sixty (60) days after receipt of this letter unless the Company first advises EPA, with supporting information, of substantial reasons not to proceed as planned.*

Even if you are unaware of any mitigating or exculpatory factors, EPA encourages the Company to explore the possibility of settlement. If you are interested in commencing settlement discussions, please contact Bridget Johnson of my staff, or have your counsel contact Ylan Nguyen, Assistant Regional Counsel, by email, to schedule a meeting or conference call. We thank you in advance for your cooperation.

Thank you for your prompt attention to this matter.

Sincerely,

**RICHARD
SAKOW**

Digitally signed by RICHARD
SAKOW
Date: 2024.05.31 09:21:59
-07'00'

Rick Sakow, Manager
Hazardous Waste and Chemicals Section
Enforcement and Compliance Assurance Division

cc (via email):

Andrew Stein, TST, Inc., CEO, astein@tst-inc.com

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¹⁹ See <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>