



REGION 9

SAN FRANCISCO, CA 94105

TRANSMITTED VIA EMAIL
RETURN RECEIPT REQUESTED

James Murphree
Director Environmental Compliance
Matheson Tri-Gas, Inc.
3 Mountainview Road
Warren, New Jersey 07059
jmurphree@mathesongas.com

RE: Matheson Tri-Gas, Inc. – Finding of Violation R9-CAA-25-1002

Dear James Murphree:

The U.S. Environmental Protection Agency (“EPA”) is issuing the enclosed Finding of Violation (“FOV”) to Matheson Tri-Gas, Inc. (“Matheson”). The EPA alleges that Matheson violated the American Innovation and Manufacturing (“AIM”) Act, 42 U.S.C. § 7675, and the regulations promulgated thereunder at 40 C.F.R. Part 84.

The EPA is issuing this FOV under Section 113(a) of the Clean Air Act (“the Act” or “CAA”) 42 U.S.C. § 7413(a)(3)¹ for violations of 40 C.F.R. Part 84. See 42 U.S.C. § 7675(k)(1)(C).

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), gives the EPA several enforcement options to resolve these violations, including issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, or bringing a judicial criminal action. The EPA is issuing this FOV based on information described in detail below that represents specific violations of applicable requirements relating to the importation of hydrofluorocarbons (“HFCs”).

Please note the opportunity for Matheson to request a conference with the EPA to present information on the identified violations in this FOV, efforts Matheson has taken to comply, and the steps Matheson will take to prevent future violations. A conference should be requested within

¹ The AIM Act provides that Sections 113 and 114 of the CAA, 42 U.S.C. § 7413 and 42 U.S.C. § 7414, apply to the AIM Act and any regulation promulgated thereunder “as though this section were expressly included in title VI of that Act.” See 42 U.S.C. § 7675(k)(1)(C).

30 calendar days following receipt of this FOV. Matheson may have counsel represent you at this conference. Please direct any request to confer within 30 calendar days to Trevor McAuliffe, Environmental Protection Specialist, at mcauliffe.trevor@epa.gov and 415-972-3422 or have your legal counsel contact Denise Leong, Attorney-Advisor, at leong.denise@epa.gov or 415-972-3409.

Sincerely,

Amy C. Miller-Bowen, Director
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency, Region 9

Enclosure

cc: Amelie Isin, HFC Program Lead, EPA
Roshni Brahmabhatt, EPA
Denise Leong, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

IN THE MATTER OF:

Matheson Tri-Gas, Inc.

Warren, NJ

Proceedings Pursuant to
Section 113(a)(3) of the Clean Air Act,
42 U.S.C. § 7413(a)(3)

FINDING OF VIOLATION

R9-CAA-25-1002

FINDING OF VIOLATION

STATUTORY AND REGULATORY AUTHORITY

The AIM Act

1. The American Innovation and Manufacturing (AIM) Act, 42 U.S.C. § 7675, provides the U.S. Environmental Protection Agency (“EPA”) with authority to regulate hydrofluorocarbons (“HFCs”), and requires the EPA to phase down HFC production and consumption.
2. The AIM Act provides that section 113 of the Clean Air Act (“The Act” or “CAA”), 42 U.S.C. § 7413, applies to the AIM Act and any regulation promulgated thereunder “as though this section were expressly included in title VI of that Act.” See 42 U.S.C. § 7675(k)(1)(C).
3. The regulations at 40 C.F.R. Part 84, Subpart A, implement the AIM Act requirement to phase down HFC production and consumption.
4. 40 C.F.R. § 84.1(b) states that Subpart A applies to “any person that produces, transforms, destroys, imports, exports, sells or distributes, offers for sale or distribution, recycles for fire suppression, or reclaims a regulated substance.”
5. 40 C.F.R. § 84.3 defines “regulated substance” as “a hydrofluorocarbon listed in the table contained in subsection (c)(1) of the AIM Act and a substance included as a regulated substance by the Administrator under the authority granted in subsection (c)(3). A current list of regulated substances can be found in appendix A to this part.”
6. 40 C.F.R. § 84.3 defines “bulk” to mean “a regulated substance of any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans. A regulated substance that must first be transferred from a container to

another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance. A regulated substance contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance.”

7. 40 C.F.R. § 84.3 defines “consumption allowances” as “a limited authorization to produce and import regulated substances; however, consumption allowances may be used to produce regulated substances only in conjunction with production allowances. A person’s consumption allowances are the total of the allowances obtained under § 84.11 or § 84.15 and may be modified under §§ 84.17 (availability of additional consumption allowances), 84.19 (transfer of allowances), and 84.35 (administrative consequences).”
8. 40 C.F.R. § 84.3 defines “application-specific allowance” as “a limited authorization granted in accordance with subsection (e)(4)(B)(iv) of the AIM Act for the production or import of a regulated substance for use in the specifically identified applications that are listed in that subsection and in accordance with the restrictions contained at § 84.5(c).”
9. 40 C.F.R. § 84.3 defines “import” as “to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. Offloading used regulated substances recovered from equipment aboard a marine vessel, aircraft, or other aerospace vehicle during servicing is not considered an import.”
10. 40 C.F.R. § 84.3 defines “importer” as “any person who imports a regulated substance into the United States. ‘Importer’ includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes: (1) [t]he consignee; (2) [t]he importer of record; (3) [t]he actual owner; or (4) [t]he transferee, if the right to draw merchandise in a bonded warehouse has been transferred.”
11. 40 C.F.R. § 84.3 defines “person” as “any individual or legal entity, including an individual, corporation, partnership, association; state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.”
12. Appendix A to 40 C.F.R. Part 84 lists the substances regulated by the AIM Act by HFC, chemical formula, and exchange value.
13. Appendix A to 40 C.F.R. Part 84 includes the compounds HFC-41, HFC-32, and HFC-23.
14. Appendix A of 40 C.F.R. Part 84 lists the exchange value as 92 for HFC-41, 675 for HFC-32, and 14,800 for HFC-23.

15. 40 C.F.R. § 84.5(b)(1) (2022)² states that “[n]o person may import bulk regulated substances, except: (i) [b]y expending, at the time of the import, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported with the required amount of allowances calculated to the tenth, but a minimum expenditure of 0.1 allowances is required for any import of regulated substances; (ii) [a]fter receipt of a non-objection notice for substances for use in a process resulting in their transformation or their destruction in accordance with § 84.25(a); (iii) [a]fter receipt of non-objection notices for used regulated substances imported for destruction in accordance with § 84.25(b); or (iv) [a]s a transshipment in accordance with § 84.31(c)(3) if all transshipped regulated substance is exported from the United States within six months of its import.”
16. 40 C.F.R. § 84.5(b)(2) (2022) states that “[e]ach person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that another party who meets the definition of an importer met one of the exceptions set forth in paragraph (b)(1).”
17. 40 C.F.R. § 84.31(c)(7) (2022)³ requires that a person importing a regulated substance, or their agent, must include the information described in 40 C.F.R. § 84.31(c)(7)(i) - (xvi) no later than 14 days before importation via a Customs and Border Protection-authorized electronic data interchange system, such as the Automated Broker Interface.
18. 40 C.F.R. § 84.5(b)(1)(i) states, in relevant part, that “[n]o person may import bulk regulated substances, either as a single component or a multicomponent substance, except . . . [i]f the importer of record possesses at the time they are required to submit reports to EPA pursuant to § 84.31(c)(7), and expends at the time of ship berthing for vessel arrivals, border crossing for land arrivals such as trucks, rails, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported, whether present as a single component or a multicomponent blend.”
19. 40 C.F.R. § 84.5(b)(3) states that “[e]ach person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that the importer of record possessed and expended allowances in accordance with the requirement outlined in paragraph (b)(1)(i) or (v) of this section or another party who meets the definition of an importer met one of the exceptions set forth in (b)(1)(ii) through (iv) of this section.”
20. 40 C.F.R. § 84.31(c)(1) provides that within 45 days after the end of each quarter, an importer of record of a regulated substance must submit to the relevant Agency official a report containing the requirements listed in 40 C.F.R. § 84.31(c)(1)(i) - (ix) in a “quarterly report.”

² The regulations at 40 C.F.R. Part 84 were subsequently changed after the alleged violations in this Finding of Violation took place. If a version of the regulations was different in 2022 from the current version of the regulations, it is cited as “2022” in this Finding of Violation.

³ 40 C.F.R. § 84.31(c)(7) (and other sections) has since been modified to require that the importer of record submit an advance notification report “no later than 10 days if arriving by marine vessel or 5 days for non-marine vessel prior to the date of importation,” effective September 18, 2023 (See 88 Fed. Reg. 46,836, 46,897 (July 20, 2023)).

21. 40 C.F.R. § 84.31(c)(7) provides that the importer of record is required to submit the information described in 40 C.F.R. § 84.31(c)(7)(i) - (xvi) in an “advance notification report” for each shipment of regulated substances imported no later than 10 days if arriving by marine vessel or 5 days for non-marine vessel prior to the date of importation.

FINDINGS OF FACT

22. Matheson Tri-Gas, Inc. (“Matheson”) is a gas chemical company located at 3 Mountainview Road, Warren, New Jersey 07059.
23. Matheson is a “person” as that term is defined at 40 C.F.R. § 84.3.
24. On or about January 3, 2023, in entry # ECB-00116563, Matheson imported approximately 4,480 kg of HFC-41 from China without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. *See Table 1 below.*
25. On or about January 12, 2023, in entry # ECB-00116738, Matheson imported approximately 6,400 kg of HFC-23 from Hong Kong without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. *See Table 1 below.*
26. On or about January 21, 2023, in entry # ECB-00117033, Matheson imported approximately 2,240 kg of HFC-41 from China without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. *See Table 1 below.*
27. On or about March 11, 2023, in entry # ECB-00117447, Matheson imported approximately 2,240 kg of HFC-41 from China without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. *See Table 1 below.*
28. On or about April 19, 2023, in entry # EE6-35352382, Matheson imported approximately 2 kg of HFC-32 from Israel without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. (Note: This shipment was not reported in Matheson’s quarterly report.) *See Table 2 below.*
29. On or about August 31, 2023, in entry # ECB-00119112, Matheson imported approximately 2,240 kg of HFC-41 from China without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. *See Table 1 below.*
30. On or about November 10, 2023, in entry # EE6-35383395, Matheson imported 12.4 kg of HFC-41 from Belgium without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. (Note: This shipment was not reported in Matheson’s quarterly report.) *See Table 2 below.*

31. On or about November 22, 2023, in entry # ECB-00119997, Matheson imported approximately 194 kg of HFC-41 from Korea. Matheson imported this shipment without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. (Note: This shipment was not reported in Matheson's quarterly report.) See Table 2 below.
32. On or about December 11, 2023, in entry # ECB-00120201, Matheson imported approximately 4,272 kg of HFC-41 from China without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. See Table 1 below.
33. On or about December 20, 2023, in entry # ECB-00120367, Matheson imported approximately 1,288 kg of HFC-41 from China without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. See Table 1 below.
34. On or about December 22, 2023, in entry # EE6-83117000, Matheson imported approximately 143 kg of HFC-23 from Australia without possessing or expending sufficient allowances or receiving a non-objection notice from the EPA. (Note: This shipment was not reported in Matheson's quarterly report.) See Table 2 below.
35. On January 25, 2024, EPA Region 9 inspected entry # EE6-83117000 at the Matheson facility located at 6775 Central Ave., Newark, CA 94560. The EPA inspection identified 17 cylinders in the shipment, including five cylinders of HFC-23. The inspection team weighed the cylinders of HFC-23 individually and found that the total net weight of the cylinders was 143 kg, compared to the entry documents which declared a total net weight of 0.5 kg. An EPA Recommendation for Seizure or Exportation Letter regarding the five cylinders of HFC-23 was sent to U.S. Customs and Border Protection on February 16, 2024, and the cylinders remain held at the Newark facility.
36. Table 1 below summarizes the illegal importations of HFCs from January 3, 2023 to December 20, 2023, as reported in Matheson's quarterly reports to the EPA. Table 2 below summarizes the illegal importations of HFCs from April 19, 2023, to December 22, 2023, that Matheson did not include in its quarterly reports to the EPA.

Table 1: Illegal importation of HFCs

	Customs Entry Number	Date of Import	HFC Type	Quantity Imported (kg)
1	ECB-00116563	1/3/2023	HFC-41	4,480
2	ECB-00116738	1/12/2023	HFC-23	6,400
3	ECB-00117033	1/21/2023	HFC-41	2,240
4	ECB-00117447	3/11/2023	HFC-41	2,240
5	ECB-00119112	8/31/2023	HFC-41	2,240
6	ECB-00120201	12/11/2023	HFC-41	4,272
7	ECB-00120367	12/20/2023	HFC-41	1,288

Table 2: Illegal importation of HFCs also NOT reported in Quarterly Reports⁴

	Customs Entry Number	Date of Import	HFC Type	Notes
8	EE6-35352382	4/19/2023	HFC-32	13 cylinders with net weight = 2 kg
9	EE6-35383395	11/10/2023	HFC-41	10 cylinders with net weight = 12.4 kg
10	ECB-00119997	11/22/2023	HFC-41	3 cylinders with net weight = 194 kg;
11	EE6-83117000	12/22/2023	HFC-23	5 cylinders with net weight = 143 kg

37. The HFC-41, HFC-23, and HFC-32, described in paragraphs 24 – 34, are the “Subject HFCs.”
38. Matheson was the Importer of Record for the Subject HFCs and was an “importer” of the Subject HFCs, as that term is defined in 40 C.F.R. § 84.3.
39. Matheson submitted quarterly reports, to EPA, that did not include information relating to the Subject HFCs in entries # EE6-35352382, # EE6-35383395, # ECB-00119997, and # EE6-83117000 which the company imported during quarters 2 and 4 of 2023, within 45 days after the end of each of these quarters.
40. The EPA calculates metric tons of EVe (MTEVe) by multiplying the mass of the regulated substance in kg by the exchange value of the bulk regulated substance and dividing the product by 1,000, pursuant to 40 C.F.R. § 84.3.
41. Between January 3, 2023 and December 22, 2023, Matheson imported a total of 16,966.4 kg of HFC-41, 6,543 kg of HFC-23, and 2 kg of HFC-32.
42. 16,966.4 kg of HFC-41 multiplied by the exchange value 92 is equivalent to approximately 1,560.9 MTEVe; 6,543 kg of HFC-23 multiplied by the exchange value 14,800 is equivalent to approximately 96,836.4 MTEVe; and 2 kg of HFC-32 multiplied by the exchange value 675 is equivalent to approximately 1.4 MTEVe. The total MTEVe for the Subject HFCs is approximately 98,398.7.
43. Matheson did not expend any consumption or application-specific allowances at the time of import, provide adequate transshipment notice at the time submission was required, or receive a non-objection notice from the EPA for the Subject HFCs.
44. For 36 entries between January 8, 2022 and November 22, 2024, Matheson did not file an advance notification report for the import of the bulk regulated substances 10 or 14 days prior to importation and did not receive a non-objection notice from the EPA for the Subject HFCs. See Tables 3 and 4 below.
45. Table 3 below lists the entries between January 8, 2022 to August 31, 2023, for which Matheson did not timely file an advance notification report 14 days prior to the importation of

⁴ Shipments EE6-35352382, EE6-35383395, and ECB-00119997 described in Table 2 above contain “residual” amounts of HFC from prior use. Shipment ECB00119997 contains 194 kg of HFC-41. Shipment EE6-83117000 contains 143 kg of HFC- 23.

HFCs, as required by 40 C.F.R. § 84.31(c)(7) (2022). Table 4 below lists the entries, between November 10, 2023 to November 22, 2024, for which Matheson did not timely file an advance notification report 10 days prior to the importation of HFCs as required by 40 C.F.R. § 84.31(c)(7).

Table 3: Advance Notification Reporting 40 C.F.R. § 84.31(c)(7) (2022)

	Quarter, Year	Customs Entry Number	Date of Arrival per GCMC Entry Summary	Date of Entry Filing
1	Q1, 2022	ECB00111606	1/9/2022	1/10/2022
2	Q1, 2022	ECB00111713	1/9/2022	1/10/2022
3	Q1, 2022	ECB00111341	1/18/2022	1/17/2022
4	Q1, 2022	ECB00111929	1/21/2022	1/19/2022
5	Q1, 2022	ECB00111937	1/21/2022	1/19/2022
6	Q1, 2022	ECB00112232	3/8/2022	2/25/2022
7	Q1, 2022	ECB00112224	3/8/2022	2/25/2022
8	Q2, 2022	ECB00112729	4/15/2022	4/11/2022
9	Q2, 2022	ECB00112737	4/15/2022	4/11/2022
10	Q2, 2022	ECB00113024	4/24/2022	4/20/2022
11	Q2, 2022	ECB00113040	4/24/2022	4/20/2022
12	Q3, 2022	ECB00114535	7/30/2022	7/28/2022
13	Q3, 2022	ECB00114253	8/3/2022	8/3/2022
14	Q3, 2022	ECB00114758	8/14/2022	8/10/2022
15	Q4, 2022	ECB00115797	10/25/2022	10/25/2022
16	Q4, 2022	ECB00116159	11/20/2022	11/14/2022
17	Q4, 2022	ECB00116282	12/12/2022	12/6/2022
18	Q1, 2023	ECB00116563	1/8/2023	12/30/2022
19	Q1, 2023	ECB00116738	1/12/2023	1/10/2023
20	Q1, 2023	ECB00117033	1/22/2023	1/19/2023
21	Q1, 2023	ECB00117447	3/11/2023	3/8/2023
22	Q2, 2023	EE635352382	4/19/2023	5/2/2023
23	Q3, 2023	ECB00119112	8/31/2023	8/28/2023

Table 4: Advance Notification Reporting 40 C.F.R. § 84.31(c)(7)

	Quarter, Year	Customs Entry Number	Date of Arrival per GCMC Entry Summary	Date of Entry Filing
24	Q4, 2023	EE635383395	11/11/2023	11/9/2023
25	Q4, 2023	ECB00119997	11/23/2023	11/20/2023
26	Q4, 2023	ECB00120201	12/11/2023	12/8/2023
27	Q4, 2023	ECB00120367	12/20/2023	12/20/2023
28	Q4, 2023	EE683117000	12/23/2023	12/23/2023
29	Q2, 2024	ECB00122298	6/20/2024	6/20/2024
30	Q3, 2024	ECB00122462	7/2/2024	7/2/2024
31	Q3, 2024	ECB00122678	7/30/2024	7/30/2024
32	Q3, 2024	ECB00123130	9/13/2024	9/13/2024
33	Q4, 2024	EI531145420	10/7/2024	10/7/2024
34	Q4, 2024	EI555025425	11/1/2024	11/1/2024
35	Q4, 2024	ECB00123825	11/7/2024	10/29/2024
36	Q4, 2024	EE635445236	11/22/2024	11/22/2024

ALLEGED VIOLATIONS

Violation 1 – Illegal Importation of a Bulk Regulated Substance in Violation of the AIM Act

46. Based on the facts in the section above, the EPA alleges that the Subject HFCs are bulk regulated substances.
47. Based on the facts in the section above, the EPA alleges that the Subject HFCs are bulk regulated substances that were imported on six instances between January 3, 2023, and August 31, 2023, without the importer expending consumption or application-specific allowances in a quantity equal to the exchange-value weight equivalent of the regulated substances imported, a violation of 40 C.F.R. § 84.5(b) (2022). See Tables 1 and 2 above.
48. Based on the facts in the section above, the EPA alleges that the Subject HFCs are bulk regulated substances that were imported on five instances between November 10, 2023, and December 22, 2023, without the importer expending consumption or application-specific allowances in a quantity equal to the exchange-value weight equivalent of the regulated substances imported, a violation of 40 C.F.R. § 84.5(b). See Tables 1 and 2 above.

*Violation 2 – Failure to Submit Quarterly Reports
in Violation of the AIM Act*

- 49. Based on the facts in the section above, Matheson violated 40 C.F.R. § 84.31(c)(1) by failing to submit a complete quarterly report to the EPA that describes the bulk regulated substances in entry # EE6-35352382 imported during the second quarter of 2023, within 45 days after the end of the second quarter. See Table 2 above.
- 50. Based on the facts in the section above, Matheson violated 40 C.F.R. § 84.31(c)(1) by failing to submit a quarterly report to the EPA that describes the bulk regulated substances in entries # EE6-35383395, # ECB-00119997, and # EE6-83117000, imported during the fourth quarter of 2023, within 45 days after the end of the fourth quarter. See Table 2 above.

*Violation 3 – Failure to Submit Advance Notification Reports
in Violation of the AIM Act*

- 51. Based on the facts in the section above, Matheson violated 40 C.F.R. § 84.31(c)(7) (2022) by failing to submit advance notification reports for 23 importations of bulk regulated substances between January 8, 2022 and August 31, 2023, no later than 14 days prior to importation. See Table 3 above.
- 52. Based on the facts in the section above, Matheson violated 40 C.F.R. § 84.31(c)(7) by failing to submit advance notification reports for 13 importations of bulk regulated substances between November 11, 2023, and November 22, 2024, no later than 10 days prior to importation. See Table 4 above.

ENVIRONMENTAL AND HEALTH IMPACTS

- 53. HFCs are potent greenhouse gases that impact our environment by trapping heat in the atmosphere.
- 54. Exposure to high concentrations of HFCs can lead to respiratory problems such as shortness of breath, coughing, and more severe cases of lung irritation. HFCs can displace oxygen in enclosed or poorly ventilated spaces, increasing the risk of asphyxiation.

ENFORCEMENT

- 55. The EPA's investigation into this matter is continuing. The above information represents specific violations that the EPA believes, at this point, are sufficiently supported by evidence to warrant the allegations in this Finding of Violation. The EPA may find additional violations as the investigation continues.
- 56. Section 113(a)(3) of the Act, 42 U.S.C § 7413(a)(3), provides the Administrator with several enforcement options to resolve these violations, including issuing an administrative

compliance order, issuing an administrative penalty order, bringing a judicial civil action, and bringing a judicial criminal action.

PENALTY ASSESSMENT CRITERIA

57. Section 113(e)(1) of the Act states that, in determining the amount of any penalty to be assessed, the Administrator will take into consideration (in addition to such other factors as justice may require) the size of the violator, the economic impact of the penalty on the violator, 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 for penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violation.
58. Section 113(e)(2) of the Act allows the Administrator to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation likely to have continued or recurred past the date of this FOV, the days of violation shall be presumed to include the date of this FOV 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.

OPPORTUNITY FOR CONFERENCE

59. Matheson may, upon request, confer with the EPA. The conference will enable Matheson to present evidence bearing upon the Finding of Violation, on the nature of the violations, and on any efforts, Matheson has taken or may have taken or proposes to take to achieve compliance. Matheson has the right to be represented by counsel. A request for conference with the EPA must be made within thirty (30) calendar days from receipt of this FOV, and the request for a conference or other inquiries concerning this FOV should be made in writing to Trevor McAuliffe of the Enforcement and Compliance Assurance Division at mcauliffe.trevor@epa.gov and 415-972-3422 or have your legal counsel contact Denise Leong, Attorney-Advisor, at leong.denise@epa.gov or 415-972-3409.

Amy C. Miller-Bowen, Director
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency, Region 9