



4. On October 14, 2015, September 17, 2017, and October 12, 2017, EPA performed inspections of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004-12, and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9603(a). Based upon the information gathered during these inspections and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA.
5. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.
6. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).
7. The Administrator of EPA delegated the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA to EPA Regional Administrators pursuant to delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, re delegated this authority with respect to enforcement of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), to the Director of the Enforcement and Compliance Assurance Division, Region IX, pursuant to delegation R9-7-6-A, dated February 11, 2013.

8. In a letter dated November 3, 2020, the United States Department of Justice granted EPA a waiver from the condition on administrative actions specified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), that the first alleged date of violation occurred no more than one year before the initiation of the administrative action, to allow EPA to pursue certain administrative actions for violations of 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). This administrative action falls within the scope of that waiver.

9. At all times relevant to this CAFO, Respondent has been a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

10. At all times relevant to this CAFO, the Facility has been a “stationary source” as defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) and 40 C.F.R. § 68.3.

11. At all times relevant to this CAFO, Respondent has been the “owner or operator” of the Facility as defined by 40 C.F.R. § 68.3.

12. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r)(5), EPA established a TQ for each “regulated substance” at or above which a facility that has such substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as “regulated toxic substances,” the TQs are specified at 40 C.F.R. § 68.130, Table 1.

13. Chlorine is a “regulated toxic substance” listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 2,500 pounds. 40 C.F.R. § 68.130, Table 1.

14. At all times relevant to this CAFO, Respondent produced, used or stored 2,500 pounds or more of chlorine in one or more processes at its Facility.

15. Sulfur dioxide is a “regulated toxic substance” listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 5,000 pounds. 40 C.F.R. § 68.130, Table 1.

16. At all times relevant to this CAFO, Respondent produced, used or stored 5,000 pounds or more of sulfur dioxide in one or more processes at its Facility.

**C. ALLEGED VIOLATIONS**

**COUNT 1**

**(Mechanical Integrity: Failure to Correct Equipment Deficiencies (Piping Corrosion) and Failure to Perform Inspections and Testing of Piping)**

17. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

18. 40 C.F.R. 68.73(e) requires that the “owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in 40 C.F.R. § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.”

19. 40 C.F.R. § 68.73(d) sets forth inspection and testing requirements, including that inspections and tests shall be performed on process equipment; inspection and testing procedures shall follow “recognized and generally accepted good engineering practices” (RAGAGEP); the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers’ recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience;

and the owner or operator shall document each inspection and test has been performed on process equipment., among other requirements

20. EPA determined that Respondent: failed to correct external corrosion deficiencies in process piping that were outside acceptable limits before further use or in a safe and timely manner; and failed to perform appropriate and inspections and tests, including visual inspections and thickness measurements, on process piping.

21. By failing to comply with the mechanical integrity requirements to correct deficiencies in chlorine and sulfur process piping that were outside acceptable limits and to comply with inspection and testing requirements, Respondent violated 40 C.F.R. § 68.73(e) and (d).

## **COUNT 2**

### **(Mechanical Integrity: Failure to Correct Equipment Deficiencies – Piping Labeling)**

22. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

23. 40 C.F.R. 68.73(e) requires that the “owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in 40 C.F.R. § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.”

24. EPA determined that Respondent did not properly label chlorine and sulfur dioxide process piping.

25. By failing to comply with the mechanical integrity requirement to correct deficiencies in equipment that were outside acceptable limits, Respondent violated 40 C.F.R. § 68.73(e).

**COUNT 3**

**(Mechanical Integrity: Failure to Correct Equipment Deficiencies – Expired Hoses)**

26. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

27. 40 C.F.R. 68.73(e) requires that the “owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in 40 C.F.R. § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.”

28. EPA determined that Respondent did not replace chlorine hoses prior to the designated replacement date; the hoses should have been replaced in March 2010 but were not taken out of service until September 2017.

29. By failing to comply with the mechanical integrity requirement to correct deficiencies in equipment that were outside acceptable limits, Respondent violated 40 C.F.R. § 68.73(e).

**COUNT 4**

**(Mechanical Integrity: Failure to Establish Written Procedures for the Railcar Valve Closure System)**

30. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

31. 40 C.F.R. § 68.73(b) sets forth mechanical integrity requirements pertaining to written procedures; the owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

32. EPA determined that Respondent did not incorporate the railcar valve closure system into the mechanical integrity program.

33. By failing to comply with the requirement to establish and implement written procedures to maintain the on-going integrity of process equipment, Respondent violated 40 C.F.R. § 68.73(b).

#### **COUNT 5**

#### **(Process Hazard Analysis: Failure to Adequately Address Hazards – Hoist Crane and Railcar Incident; Failure to Promptly Resolve Recommendations)**

34. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

35. 40 C.F.R. § 68.67(c)(1) and (2) require that the Process Hazard Analysis (PHA) shall address: “the hazards of the process;” and the “identification of any previous incident which had a likely potential for catastrophic circumstances.”

36. 40 C.F.R. § 68.67(e) requires that the owner or operator shall establish a system to promptly address the PHA team’s findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

37. EPA found that Respondent uses cranes/hoists to lift one-ton chlorine cylinders from the filling station platform onto forklifts during the chlorine repackaging process. EPA determined that the PHA did not address the hazard of a crane/hoist failure potentially causing a chlorine release.

38. EPA determined that the PHA did not adequately address a previous incident experienced at the Facility in which a railcar carrying sulfur dioxide, which was traveling too fast to stop within the available track length on Respondent's rail spur, impacted other railcars and caused a railcar to derail and collide with process piping.

39. EPA determined that the PHA did not resolve and document the resolution of the following PHA recommendation in a timely manner: the 2016 PHA contained a recommendation to verify that coordination agreements and/or memorandums of understanding are in place between Respondent and applicable local emergency response agencies.

40. By failing to comply with PHA requirements, Respondent violated 40 C.F.R. § 68.67(c)(1)-(2) and (e).

#### **COUNT 6**

#### **(Process Safety Information: Failure to Complete a Compilation of Accurate Information Pertaining to Equipment in the Process – Piping and Instrumentation Diagrams)**

41. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

42. 40 C.F.R. § 68.65(a) requires that the owner or operator shall complete a compilation of written process safety information before conducting any PHA required by the rule and that the process safety information shall include information pertaining to the



equipment in the process. As required by 40 C.F.R. § 68.65(d)(1)(ii), information pertaining to the equipment in the process shall include piping and instrument diagrams (P&IDs).

43. EPA determined that Respondent did not complete a compilation of P&IDs that accurately demonstrated the physical sequence of equipment of systems.

44. By failing to comply with the process safety information requirement to include information pertaining to equipment in the process, Respondent violated 40 C.F.R. § 68.65(a) and (d)(1)(ii).

#### **COUNT 7**

#### **(Operating Procedures: Failure to Develop and Implement Operating Procedures for the Railcar Valve Closure System)**

45. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

46. 40 C.F.R. § 68.69(a) requires that owners or operators develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements: steps for each operating phase; operating limits; safety and health considerations; and safety systems and their functions.

47. EPA determined that Respondent did not include the railcar valve closure system within its operating procedures.

48. By failing to develop and implement operating procedures that addressed safety systems and their functions, Respondent violated 40 C.F.R. § 68.69(a).

#### **COUNT 8**

**(Operating Procedures: Failure to Include Operating Limits in Tank Car Operating Procedures)**

49. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

50. 40 C.F.R. § 68.69(a) requires that owners or operators develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements: steps for each operating phase; operating limits; safety and health considerations; and safety systems and their functions.

51. EPA determined that Respondent did not include an operating limit within operating procedures for its *Compressed Gas Tank Car Connect, Disconnect, and Release* procedures.

52. By failing to develop and implement written operating procedures that addressed operating limits, Respondent failed to comply with 40 C.F.R. § 68.69(a).

**COUNT 9**

**(Failure to Translate Operating Procedures; Failure to Provide Training in the Primary Language of the Operators)**

53. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

54. 40 C.F.R. § 68.69(a) requires that owners or operators develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information.

55. EPA determined that Respondent did not develop and implement written operating procedures that provide clear instructions for safely conducting activities for employees that speak the Spanish language.

56. 40 C.F.R. § 68.71(c) requires that the owner or operator shall ascertain that each employee involved in operating a process has received and understood their required training, and shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

57. EPA determined that Respondent did not ascertain that each employee involved in operating a process understood the provided training, since its training records did not indicate that any training had been conducted in Spanish, which was the primary language of at least some of the operators.

58. By failing to provide written operating procedures with clear instructions for safely conducting activities, Respondent violated 40 C.F.R. § 68.69(a).

59. By failing to ascertain that each employee involved in operating a process has received and understood the required training, Respondent violated 40 C.F.R. § 68.71(c).

#### **COUNT 10**

##### **(Recordkeeping: Failure to Maintain Mechanical Integrity Records)**

60. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

61. 40 C.F.R. § 68.200 requires that the owner or operator shall maintain records supporting the implementation of the Section 112(r) program's chemical accident prevention provisions at the facility for five years.

62. EPA determined that Respondent had a policy of retaining mechanical integrity records for less than the minimum retention period of five years.

63. By failing to maintain its mechanical integrity records for five years, Respondent violated 40 C.F.R. § 68.200.

**D. CIVIL ADMINISTRATIVE PENALTY**

64. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay **TWO-HUNDRED THOUSAND DOLLARS (\$200,000)**, plus interest, in settlement of the civil penalty claims made in this CAFO. This CAFO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.

65. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68,” dated June 2012, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

66. Respondent shall pay the assessed penalty according to the terms of this CAFO and Attachment 1, attached hereto, which specifies an installment payment plan and interest schedule.

67. All payments shall indicate the name of the Facility, EPA Facility identifier (FRS 110057112556), the Respondent’s name and address, and the appropriate EPA docket number of this action. Payments shall be made by corporate, certified, or cashier’s checks payable to “Treasurer of the United States” and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Environmental Protection Agency  
Government Lock Box 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: Craig Steffen (513-487-2091)

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

ACH payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006

Environmental Protection Agency

CTX Format Transaction Code 22-checking

Physical Location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

Online Payment:

This payment option can be accessed from the information below:

[www.pav.gov](http://www.pav.gov)

Enter “SFO 1.1” in the search field

Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent via email with a transmittal letter indicating Respondent’s name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)  
U.S. Environmental Protection Agency - Region 9  
R9HearingClerk@epa.gov

and

Cyntia Steiner  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency - Region 9  
Steiner.Cyntia@epa.gov

68. In accordance with the Debt Collection Act of 1982, failure to send the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CAFO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

69. The penalties specified in this CAFO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

**E. RESPONDENT'S ADMISSIONS**

70. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations or conclusions of law contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section D of this CAFO; (iv) waives any right to contest the allegations contained in Section C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

**F. PARTIES BOUND**

71. This CAFO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section D) has been paid and the compliance tasks required under Section G have been completed, and any delays in performance and/or stipulated penalties have been resolved.

72. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CAFO.

73. Until all requirements of this CAFO are satisfied, Respondent shall give notice of this CAFO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA no later than seven (7) days prior to such transfer.

74. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CAFO, and to legally bind Respondent to it.

**G. COMPLIANCE TASKS**

75. All submissions to EPA in this section shall be in writing and submitted to Cyntia Steiner at EPA at [steiner.cyntia@epa.gov](mailto:steiner.cyntia@epa.gov).

76. Respondent shall complete each compliance task required in this section by the associated deadline for the compliance task. If Respondent is unable to complete any of the compliance tasks required in this section by the associated deadline, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit this request within seven (7) days of identifying a need for a modification. Based on this request, EPA may approve or deny, in full or in part, the request for modification. Approval will not be unreasonably withheld.

77. Progress Reports. Within ninety (90) days of the Effective Date of the CA/FO, and every ninety (90) days thereafter until completion of Compliance Tasks #1-4, Respondent shall submit a written progress report to EPA ("Progress Report"). Each Progress Report shall describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, all significant developments during the current reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems. Respondent shall submit one Progress Report



at least thirty (30) days in advance of performing the field exercise as specified in Compliance Task #5.

78. Compliance Task #1. A “computerized maintenance management system” (CMMS) is software that interacts with end users, applications and the database itself to capture and analyze data. Respondent agrees to set up the Limble computerized maintenance management software system (CMMS) with each system inspection in Chapter IV and V of JCI’s Mechanical Integrity Manual and to utilize the Limble CMMS for documenting system inspections at the Torrance facility once such system inspections are set up in the system. Limble CMMS is a cloud-based system that is capable of being accessed through both desktop and mobile devices. Respondent must begin setting up the Limble CMMS with the system inspections by no later than August 3, 2021. Respondent must have set up all system inspections in the Limble CMMS by no later than March 3, 2022. EPA’s acceptance of the Limble CMMS is limited to this CAFO, and shall not be viewed as a general endorsement by EPA of this system.

79. Compliance Task #2. Within sixty (60) days after the Effective Date of the CAFO, Respondent shall update the Mechanical Integrity Manual, including revisions at least to Appendix D (*Pipe Testing Protocol*) and Appendix E (*Ultrasonic Thickness Testing*) to reflect current practices. Among other revisions, Respondent shall revise the Mechanical Integrity Manual’s Appendix E to: (1) specify that it applies to all JCI facilities; (2) define roles and responsibilities of the Respondent’s corporate management and the Facility; (3) include all codes/standards or RAGAGEP references; (4) specify data points for

ultrasonic thickness;<sup>1</sup> (5) require the Facility to document review of the ultrasonic thickness report and to track action items; and (6) specify the allowable time for replacement when the “Most Recent Reading” is approaching or less than the “Action Item Minimum Thickness.” Respondent shall submit the revised Mechanical Integrity Manual to EPA for review, and EPA plans to provide its recommendations, if any, within sixty (60) days of receipt of those revisions. Respondent shall review and consider such recommendations provided by EPA.

80. Compliance Task #3.

a. Respondent agrees to provide training in a language that each operator can adequately understand.

b. Within ninety (90) days from the Effective Date of the CAFO, Respondent shall certify, under penalty of law, that it has translated the following operating procedures into the Spanish language:

- (1). Startup and Shutdown Procedures – **PR IX 1-5**
- (2). Normal operations
  - a. Repackaging Chlorine & Sulfur Dioxide Cylinders – **PR II 1-7.4a**
  - b. Repackaging Chlorine and Sulfur Dioxide Tons – **PR II 8-14**
  - c. Production Procedures – Liquids (Sodium Hypochlorite & Sodium Bisulfite) – **PR I 1-13**
  - d. Ton and Cylinder Valve Reconditioning and Torque Wrench Procedures - **PR V 1-3.8**
  - e. SOP for Compressed Gas Railcar Connection, Disconnection, and Release - **PR VI 20-28**
- (3). Temporary operations – **PR II 48-51**
- (4). Emergency shutdown procedures – **PR II 52-53**
- (5). Emergency operations – **PR II 54**

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<sup>1</sup> Separate from the MI Manual updates/revisions, Respondent agrees to provide all data points for ultrasonic thickness to EPA within seven (7) days of receipt of the data points, until completion of Compliance Task #2.

- (6). Safety and health considerations – **PR II 55-57**
- (7). Process limits, deviation consequences, equipment safety systems, and compliance with recognized and generally accepted good engineering practices – **PR II 58-60**
- (8). Precautions to Prevent Exposure (Plant Safety Equipment and Personal Protective Equipment) – **SF V 1-13**
- (9). Unique Hazards (Hazard Reporting Procedures) – **SF III 3-6**
- (10). Safety Systems and Functions (Mitigation Systems) – **SF XIX 1-14**
- (11). Annual Certification of Operating Procedures – **SF IV (Attach. C, Element #4)**

c. Within ninety (90) days after the Effective Date of the CAFO, Respondent shall certify, under penalty of law, that it has translated into the Spanish language the Facility's safe work practices, including:

- (1). Lockout / Tagout Program – **ST V 1-40**
- (2). Opening Process Equipment or Piping (Line Breaking) – **SF II 44**
- (3). Facility Entrance Control – **SF II 7-9**

81. Compliance Task #4. Within no later than ninety (90) days after the Effective Date of this CAFO, Respondent shall certify, under penalty of law, that it has developed and implemented a formal document control procedure for procedures and policies related to RMP covered processes. Respondent shall provide to EPA an electronic copy of its formal document control procedure, for EPA review.

82. Compliance Task #5. As a condition of settlement, Respondent shall perform the Accelerated Compliance Project specified herein. Performance of the requirements detailed herein for Compliance Task #5 shall constitute satisfactory performance of the Accelerated Compliance Project, which the parties agree are intended to provide significant environmental and/or public health protection and improvements.

83. Accelerated compliance for emergency response exercises. Respondent shall perform and complete a tabletop emergency response exercise, as defined under 40 C.F.R. § 68.96(b)(2), and in accordance with the requirements of 40 C.F.R. § 68.96(b) and (b)(2), before the Effective Date of this CAFO. Respondent shall perform and complete an emergency response field exercise, as defined under 40 C.F.R. § 68.96(b)(1), and in accordance with the requirements of 40 C.F.R. § 68.96(b) and (b)(1), no later than December 31, 2024. The tabletop exercise and the field exercise shall each include the participation of at least local emergency response officials. At EPA's discretion, EPA Region 9's Emergency Management Division may participate in the field exercise. Respondent shall notify EPA of the planned date, time, and location for the field exercise not less than thirty (30) days prior to the planned date. In the event EPA Region 9's Emergency Management Division wishes to participate, it shall notify Respondent not less than ten (10) days prior to the planned exercise of the names of anticipated attendees.

84. Documentation. Respondent shall comply with all evaluation report requirements of 40 C.F.R. § 68.96(b)(3), including but not limited to the 90-day deadlines for such reports. Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such evaluation reports are true, accurate, and complete by signing the following statement: "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of

fines and imprisonment.” Within seven (7) days after the completion of each evaluation report, Respondent shall submit each evaluation report via email to:

Cyntia Steiner  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency – Region 9  
Steiner.Cyntia@epa.gov

and

Jon Owens  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 9  
Owens.Jon@epa.gov

85. Failure to complete either of the Accelerated Compliance Project tasks outlined under Compliance Task #5 (tabletop emergency response exercise or emergency response field exercise) by each of their respective deadlines, shall be deemed a violation of this CAFO, and Respondent shall be liable for stipulated penalties pursuant to Section H below. Failure to submit either of the evaluation reports as required under Compliance Task #5 shall be deemed a violation of this CAFO, and Respondent shall be liable for stipulated penalties pursuant to Section H below.

**H. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

86. In the event Respondent fails to meet any requirement set forth in this CAFO, Respondent shall pay stipulated penalties as follows: THREE-HUNDRED SEVENTY-FIVE DOLLARS (\$375) per day for the first to fifteenth day of delay, SEVEN-HUNDRED FIFTY DOLLARS (\$750) per day for the sixteenth to thirtieth day of delay, and THREE-THOUSAND SEVEN-HUNDRED FIFTY DOLLARS (\$3,750) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under

this CAFO in a manner acceptable to EPA and within the specified time schedules in and approved under this CAFO.

87. In the event that Respondent fails to substantially conduct the Accelerated Compliance Project (Compliance Task #5) in accordance with this CAFO, Respondent shall pay a stipulated penalty of TWENTY-SIX THOUSAND, ONE-HUNDRED SEVENTY-THREE DOLLARS (\$26,173) less any stipulated penalties already paid for failure to submit the evaluation reports pursuant to Compliance Task #5.

88. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties unless Respondent has invoked Dispute Resolution in accordance with Section J. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section D of this CAFO.

89. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CAFO or with the CAA and its implementing regulations.

90. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

91. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CAFO.

**I. FORCE MAJEURE**

92. “*Force majeure*,” for purpose of this CAFO, is defined as any event arising from causes beyond the control of Respondent or any entity controlled by Respondent, that delays or prevents the performance of any obligation under this CAFO despite Respondent’s best efforts to fulfill the obligation. “Best efforts to fulfill the obligation” includes best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any *force majeure* event as it is occurring and following the event such that the delay and any adverse effects of the delay are minimized to the greatest extent possible.

93. If any *force majeure* event occurs that impedes, delays or makes impossible Respondent’s performance of any obligation under this CAFO, as to which Respondent intends to assert a claim of *force majeure*, Respondent shall notify EPA in writing within thirty (30) days of when Respondent first knew that the event would cause a delay. The notice shall describe the event, the cause or causes of the event, the measures taken and to be taken by Respondent to prevent or minimize delayed performance or non-performance caused by the event, and the timetable by which those measures will be implemented.

94. If EPA agrees that the delay or anticipated delay is attributable to *force majeure*, it will notify Respondent in writing, and the time for performance of the obligations under this CAFO that are affected by *force majeure* will be extended by EPA, for such time as is

necessary to complete those obligations. An extension of the time for performance of the obligations affected by *force majeure* will not, of itself, extend the time for performance of any other obligation.

95. If EPA does not agree that the delay or anticipated delay has been or will be caused by *force majeure*, EPA will notify Respondent in writing of its decision. Respondent can invoke Dispute Resolution under Section J.

**J. DISPUTE RESOLUTION**

96. If the Respondent objects to any decision of EPA regarding Sections G, H or I, Respondent shall notify EPA in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive.

97. The Director of the Enforcement and Compliance Assurance Division or his/her designee ("Director"), and the Respondent shall have an additional thirty (30) days to resolve the dispute. If an agreement is reached between the Director and Respondent, the agreement shall be reduced to writing and signed by the Director and Respondent. If the Director and Respondent are unable to reach agreement within the allotted time period, the Director shall provide a written statement of EPA's decision to Respondent.

98. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way, any obligations of Respondent under this CAFO, unless and until final resolution of the dispute so provides. Stipulated penalties for the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. If the Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section H.



**K. RESERVATION OF RIGHTS**

99. Except as addressed in this CAFO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CAFO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory or common law enforcement authority of the United States. This CAFO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA or any other statutory, regulatory or common law enforcement authority of the United States, except as otherwise described herein.

100. Compliance by Respondent with the terms of this CAFO shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, state, tribal or federal laws and regulations. This CAFO is not intended to be nor shall it be construed as a permit. This CAFO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state or local permit.

101. The entry of this CAFO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CAFO.

Respondent's full compliance with this CAFO shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this CAFO.

102. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CAFO.

**L. MISCELLANEOUS**

103. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.

104. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

105. Each party to this action shall bear its own costs and attorneys' fees.

106. Respondent consents to entry of this CAFO without further notice.

**M. EFFECTIVE DATE**

107. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

In the Matter of JCI Jones Chemicals, Inc.  
Consent Agreement and Final Order

Respondent JCI Jones Chemicals, Inc.

DATE: August 2, 2021

BY:  \_\_\_\_\_

Name: Timothy J. Gaffney

Title: Executive Vice President

United States Environmental Protection Agency, Region 9

DATE: \_\_\_\_\_

**AMY MILLER-**  
**BOWEN**

BY: \_\_\_\_\_


Amy C. Miller-Bowen  
Director  
Enforcement and Compliance Assurance Division

Digitally signed by AMY MILLER-BOWEN  
Date: 2021.08.24 15:37:36 -07'00'

**FINAL ORDER**

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. Sections 22.13 and 22.18 in the Matter of JCI Jones Chemicals, Inc. (Docket No. CAA(112r)-09-2021-0067) be entered and that Respondent shall pay a civil penalty of **TWO-HUNDRED THOUSAND DOLLARS (\$200,000)**, plus interest and according to the payment schedule as specified in Attachment 1, and will implement the compliance tasks described in Section G, in accordance with all terms and conditions of this CAFO.

STEVEN  
JAWGIEL

 Digitally signed by STEVEN  
JAWGIEL  
Date: 2021.08.30 09:19:59 -07'00'

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Date

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Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

ATTACHMENT 1

INSTALLMENT PAYMENT AND INTEREST SCHEDULE

DOCKET # CAA(112r)-09-2021-0067

<b>Principal</b>	<b>Days</b>	<b>Interest Payment</b>	<b>Principal</b>	<b>Installment Payment</b>
\$200,000.00	30	\$ -	\$40,000.00	\$ 40,066.67
\$160,000.00	30	\$ 133.33	\$40,000.00	\$ 40,066.67
\$120,000.00	30	\$ 100.00	\$40,000.00	\$ 40,066.67
\$80,000.00	30	\$ 66.67	\$40,000.00	\$ 40,066.67
\$40,000.00	30	\$ 33.33	\$40,000.00	\$ 40,066.67
<b>Totals</b>	150	\$ 333.33	\$200,000.00	\$ 200,333.35

**1st Installment: \$40,066.67 (Due within 30 days of the Effective Date of the CAFO)**

**2nd Installment: \$40,066.67 (Due within 60 days of the Effective Date of the CAFO)**

**3rd Installment: \$40,066.67 (Due within 90 days of the Effective Date of the CAFO)**

**4th Installment: \$40,066.67 (Due within 120 days of the Effective Date of the CAFO)**

**5th Installment: \$40,066.67 (Due within 150 days of the Effective Date of the CAFO)**

Total Payment: \$200,333.35

**CERTIFICATE OF SERVICE**

This is to certify that the fully executed Consent Agreement and Final Order in the matter of JCI Jones Chemicals, Inc., **CAA(112R)-09-2021-0067** was filed with the Regional Hearing Clerk and that a copy of the same was sent to the following parties:

VIA E-MAIL

FOR RESPONDENT: Timothy J. Gaffney  
Executive Vice President  
JCI Jones Chemicals, Inc.  
100 Sunny Sol Blvd.  
Caledonia, NY 14423  
[tgaffney@jcichem.com](mailto:tgaffney@jcichem.com)

VIA E-MAIL

FOR COMPLAINANT: Jon Owens  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region IX  
[Owens.Jon@epa.gov](mailto:Owens.Jon@epa.gov)

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Steven Armsey  
Regional Hearing Clerk

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Date