UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of: Vanchlor Company, Inc. 45 Main Street Lockport, New York, **Respondent.**	**CONSENT AGREEMENT AND FINAL ORDER** Docket No. CAA-02-2015-1213

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CA/FO") is issued pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d). The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency ("EPA"), Region 2, who has been delegated the authority to institute this action. Respondent is Vanchlor Company, Inc. ("Respondent").

2. EPA and the U.S. Department of Justice have determined, pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), that EPA may pursue this matter through administrative enforcement action.

3. Pursuant to Section 22.13(b) of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations ("C.F.R.") § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CA/FO pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

4. It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without litigation.

STATUTORY BACKGROUND

5. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), provides for the assessment of penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

6. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate release prevention, detection, and correction requirements regarding regulated

substances in order to prevent accidental releases of regulated substances. EPA promulgated regulations in 40 C.F.R. Part 68 to implement Section 112(r)(7) of the CAA, which regulations set forth the requirements of risk management programs that must be established and implemented at stationary sources subject to this section of the CAA. The regulations at 40 C.F.R. Part 68, Subparts A through G, require owners and operators of stationary sources to, among other things, develop and implement: (a) a management system to oversee the implementation of the risk management program elements; and (b) a risk management program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program. Pursuant to 40 C.F.R. Part 68, Subparts A and G, the risk management program for a stationary source that is subject to these requirements is to be described in a risk management plan ("RMP") that must be submitted to EPA.

7. Sections 112(r)(3) and (5) of the CAA, 42 U.S.C. §§ 7412(r)(3) and (5), require the Administrator to promulgate a list of regulated substances, with threshold quantities. EPA promulgated a regulation known as the List Rule, at 40 C.F.R. Part 68, Subpart F, which implements Sections 112(r)(3) and (5) of the CAA, and which lists the regulated substances and their threshold quantities.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. Part 68 (including, but not limited to, submission of an RMP to EPA), no later than June 21, 1999, or three years after the date on which such regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which the regulated substance is first present in a process above the threshold quantity, whichever is latest.

9. The regulations set forth at 40 C.F.R. Part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. A covered process is subject to Program 3 requirements, as per 40 C.F.R. § 68.10(d), if: (a) the process does not meet one or more of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b); and (b) if either one of the following conditions is met: the process is listed in one of the specific North American Industry Classification System (generally referred to as "NAICS") codes found at 40 C.F.R. § 68.10(d)(1) or the process is subject to the United States Occupational Safety and Health Administration process safety management standard set forth in 29 C.F.R. § 1910.119. As required by 40 C.F.R. § 68.10(c), a facility must register its RMP-covered process as a Program 2 process if it does not meet the requirements of either Program 1 or Program 3.

10. The regulations set forth at 40 C.F.R. § 68.12(d) require that the owner or operator of a stationary source with a Program 3 process undertake certain tasks, including, but not limited to, development and implementation of a management system (pursuant to 40 C.F.R. § 68.15), the implementation of prevention program requirements, which include mechanical integrity (pursuant to 40 C.F.R. §§ 68.65-68.87), the development and implementation of an emergency response program (pursuant to 40 C.F.R. §§ 68.90-68.95), and the submission of additional information on prevention program elements regarding Program 3 processes (pursuant to 40 C.F.R. § 68.175).

FINDINGS OF FACT

11. Respondent is the owner and/or operator of a facility located at 45 Main Street, Lockport, (the "Facility"), which operates as an aluminum chloride manufacturing Facility.

12. On or about June 18, 1999, Respondent submitted an initial RMP to EPA for the Facility, and thereafter updated RMP submissions were made to EPA regarding the Facility, including an updated RMP submitted on or about January 26, 2012 ("January 2012 RMP"). The January 2012 RMP was the most recent RMP submission at the time of the EPA inspection described below.

13. The January 2012 RMP submitted by Respondent listed one covered process, a chlorine (CAS# 7782-50-5) process, and identified that process as subject to Program 3 requirements.

14. Chlorine is a regulated substance pursuant to Section 112(r)(2) and (3) of the CAA and 40 C.F.R. § 68.3.

15. The threshold quantity for chlorine pursuant to 40 C.F.R. § 68.130 is 2,500 pounds.

16. At all times relevant hereto, the regulated substance was present in the process at the Facility in quantities exceeding the threshold quantity.

17. At all times relevant hereto, the Facility's covered process was subject to Program 3 requirements.

18. On December 3, 2013, EPA conducted an inspection at the Facility (the "Inspection") to determine, among other things, Respondent's compliance with Section 112(r) of the CAA. The Inspection included discussions with Facility representatives concerning the Facility's covered process and risk management program. The inspectors also toured the Facility in the presence of Respondent's representatives.

19. As part of EPA's Inspection, EPA requested and reviewed documentation regarding Respondent's risk management program and covered process at the Facility, including but not limited to, hazard assessment documentation, process safety information, and process hazard analysis documentation.

20. On April 10, 2014, EPA provided Respondent with the inspection report, accompanied by a listing of the potential violations identified in Findings Section of the inspection report. In a meeting held between the Respondent and EPA on June 9, 2014, the Respondent agreed to take all actions necessary to resolve the items listed in the Findings Section of the inspection report. Respondent has submitted information to EPA that it has addressed these items.

EPA CONCLUSIONS OF LAW

21. Respondent is, and at all times referred to herein was, a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

22. The Facility is a stationary source pursuant to 40 C.F.R. § 68.3.

23. Chlorine is a regulated substance pursuant to Sections 112(r)(2) and (3) of the CAA and 40 C.F.R. § 68.3. The threshold quantity for chlorine, as listed in 40 C.F.R. § 68.130 is 2,500 pounds.

24. Respondent handles and stores, and has handled and stored, chlorine in its process at its Facility in quantities exceeding the threshold quantity for chlorine.

25. At the time of EPA's Inspection, EPA identified violations of the applicable requirements at 40 C.F.R. Part 68, including the following:

a. Facility representatives did not provide documentation that the chlorine process equipment complies with recognized and general accepted good engineering practices (e.g. Chlorine Institute codes and standards), as required by 40 CFR § 68.65(d)(2);

b. a process hazard analysis was performed in 2012, but many action items noted in the 2012 PHA did not result in any recommendations; the Facility does not have a system to track the status of PHA recommendations and action items, as required by 40 CFR § 68.67(e);

c. there was no annual certification that the operating procedures were correct and accurate, as required by 40 CFR § 68.69(c);

d. there was no documented formal training program for aluminum chloride process operators, as required by 40 CFR § 68.71; and

e. Facility representatives did not provide selection and approval documentation for specific contractors, as required by 40 CFR § 68.87(b)(1).

26. Respondent's failure to fully comply with the requirements of 40 C.F.R. Part 68 regarding the Facility constitutes violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Respondent is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 113(d) of the CAA and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (40 C.F.R. Part 22), it is hereby agreed by and between Complainant and Respondent, as follows:

27. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent (a) admits the jurisdictional basis for this matter, (b) admits the Findings of Fact set forth above, (c) consents to the assessment of the civil penalty set forth below, (d) consents to the issuance of the attached Final Order, and (e) waives its right to contest the allegations and its right to appeal the attached Final Order.

28. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

29. Respondent hereby certifies that it is now in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, at the Facility.

30. Respondent agrees to pay a civil penalty in the total amount of **$33,150.00,** as described below. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer ("EFT"). Payment of the penalty must be received by EPA **on or before thirty (30) calendar days** after the date of signature of the Final Order at the end of this document (hereinafter referred to as the "due date").

If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America" and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall be identified with a notation listing the following: "In the Matter of Vanchlor Company, Inc." and shall bear thereon "Docket Number CAA-02-2015-1213."

If payment is made by check, Respondent shall simultaneously furnish proof that such payment has been made to:

Lauren Charney
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2

290 Broadway, 16th Floor
New York, NY 10007-1866.

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

a. Amount of Payment: $33,150.00
b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
d. Federal Reserve Bank of New York ABA routing number: 021030004
e. Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
f. Name of Respondent: Vanchlor Company, Inc.
g. Case Number: CAA-02-2014-1225

If payment is made by EFT, Respondent shall simultaneously send a letter to Ms. Charney and the Regional Hearing Clerk at their addresses above which references the date of the EFT, the payment amount, the name of the case, the case number, and Respondent's name and address.

31. If Respondent fails to make full and complete payment of the civil penalty that it is required to pay by this CA/FO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

a. Interest. If Respondent fails to make payment, or makes partial payment, interest shall accrue on any unpaid portion of the assessed penalty at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment due date.

b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a handling charge of fifteen dollars ($15.00) shall be paid per month, or any portion thereof, if any portion of the assessed penalty is not paid within thirty (30) days of the payment due date.

c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly non-payment penalty for each calendar quarter during which such a failure to pay persists. Such non-payment penalty shall be ten percent (10%) of the aggregate amount

of Respondent's outstanding penalties and non-payment penalties accrued from the beginning of such quarter.

32. The penalty specified in Paragraph 30, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of state or federal taxes.

33. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full settlement of Respondent's alleged violations of the CAA set forth above in the Findings of Fact and EPA Conclusions of Law.

34. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. This CA/FO shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

35. This CA/FO and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding except in an action, suit, or proceeding to enforce this CA/FO or any of its terms and conditions.

36. Respondent explicitly waives any right to request a hearing and/or contest any allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.

37. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer, where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

38. Each party hereto shall bear its own costs and attorneys' fees in the action resolved by this CA/FO.

39. This CA/FO shall be binding on Respondent and its successors and assignees.

40. Each of the undersigned representatives to this CA/FO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of the CA/FO and to bind that party to it.

41. Respondent consents to service upon Respondent of a copy of this CA/FO by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

In the Matter of Vanchlor Company, Inc.
Docket Number CAA-02-2015-1213

For Respondent
Vanchlor Company, Inc.

Signature

Date: 9/30/15

RICHARD G. SHOTELL
Name (Printed or Typed)

PRESIDENT
Title (Printed or Typed)

Marilyn McNulty

From: Richard Shotell <rshotell@gmail.com>
Sent: Wednesday, September 30, 2015 12:19 PM
To: Marilyn@vanchlor.com
Subject: EPA

Marilyn
Please use this email as authorization to use my signature stamp for the Vanchlor consent agreement and final order with the EPA.
Thanks,
Dick

Sent from my iPhone=

In the Matter of Vanchlor Company, Inc.
Docket Number CAA-02-2015-1213

For Complainant
U.S. Environmental Protection Agency, Region 2

Walter Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

Date: 9/30/2015

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For Respondent
Vanchlor Company, Inc.

_____ Date: _____
Signature

_____
Name (Printed or Typed)

_____
Title (Printed or Typed)

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection
Agency – Region 2
290 Broadway
New York, New York 10007-1866

Date: Sept 30, 2015

In the Matter of: Vanchlor Company, Inc.
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Certificate of Service

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number **CAA-02-2015-1213**, in the following manner to the respective addressees below:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

Copy by Certified Mail
Return Receipt Requested

Richard Shotell
Vanchlor Co., Inc.
45 Main Street
Lockport, NY 14094

Date: 10/6/15

Name: Lauren Charney

Title: Asst. Regional Counsel

Address: 290 Broadway, NY, NY 10007