UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

U.S. EPA-REGION 3-RHC
FILED-17SEP2019AM11:38

In the Matter of:	:	
	:	
Main Pool and Chemical, Inc.	:	**U.S. EPA Docket Nos.**
110 Commerce Road	:	**CAA-03-2019-0107**
Dupont, Pennsylvania 18641,	:	**EPCRA-03-2019-0107**
	:	
Respondent.	:	**Proceeding under Sections 112(r) and 113 of**
	:	**the Clean Air Act, 42 U.S.C. §§ 7412(r) and**
	:	**7413, and Sections 311, 312, and 325**
	:	**of the Emergency Planning and Community**
	:	**Right-to-Know Act, 42 U.S.C.**
	:	**§§ 11021, 11022 and 11045**
	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III ("Complainant") and Main Pool and Chemical, Inc. ("Respondent") (collectively the "Parties"), pursuant to Section 113(d) of the Clean Air Act, as amended (the "CAA"), 42 U.S.C. § 7413(d), and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Section 113 of the CAA vests the President of the United States with the authority to assess penalties and undertake other actions required by this Consent Agreement, which authority has been delegated to the Administrator of the U.S. Environmental Protection Agency ("EPA"). Section 325 of EPCRA authorizes the Administrator of the EPA to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated these authorities to the Regional Administrator who, in turn, has delegated them to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against Respondent under the CAA and EPCRA for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2) and (8).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.

7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.

9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.

10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

CAA FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

12. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and the Attorney General, each through their respective delegates, have jointly determined that this administrative penalty action is appropriate.

13. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

14. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), known as the "General Duty Clause," the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C.

§ 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

15. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment, the threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.

16. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68 (referred to as the "RMP Regulations"), which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The RMP Regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program must be described in a risk management plan that must be submitted to EPA. The risk management plan must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

17. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must submit a risk management plan to EPA no later than the latter of June 21, 1999, three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which a regulated substance is first present above the threshold quantity in a process.

18. Respondent is the owner and operator of a chemical distribution facility located at 110 Commerce Road, in Dupont, Pennsylvania (the "Facility").

19. Respondent is a Pennsylvania corporation with its headquarters located at 110 Commerce Road, Dupont, Pennsylvania.

20. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is subject to the assessment of civil penalties for the violations alleged herein.

21. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines "stationary source," as "any buildings, structures, equipment, installations, or substance emitting stationary

activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur."

22. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The list of substances is codified at 40 C.F.R. § 68.130.

23. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

24. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), in 40 C.F.R. § 68.130.

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

26. On July 23, 2015, EPA conducted an inspection of the Facility to determine whether Respondent was in compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and regulations promulgated thereunder, the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 (the "CAA Inspection").

27. On December 15, 2016, EPA issued an Administrative Settlement Agreement and Order on Consent, EPA Docket No. CAA-03-2017-0069 ("Order") to Respondent, requiring Respondent to address violations of Section 112(r)(1) and (7) of the CAA, 42 U.S.C. § 7612(r)(1) and (7), regarding its storage of chlorine and other hazardous chemicals at the Facility.

Count I
Failure to Comply with Section 112(r)(7) of the CAA

28. The allegations of Paragraphs 1 through 27 of this Consent Agreement are incorporated herein by reference.

29. As owner and operator of the Facility, Respondent is, and at times referred to herein was, the owner and operator of a "stationary source," as the term is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

30. Based on the observations of EPA inspectors during the CAA Inspection, EPA has determined that Respondent has stored as much as 15,250 pounds of the toxic liquefied

gas chlorine at the Facility. The chlorine was stored in two (2) one-ton cylinders and in as many as seventy-five (75) 150-pound cylinders. Respondent stored the one-ton cylinders outside of the warehouse, and stored the 150-pound cylinders inside the warehouse next to the loading area.

31. Based on information provided by Respondent to EPA, Respondent stored chlorine in a process in amounts above the threshold quantity of 2,500 pounds in calendar years 2012 through August 1, 2019.

32. Respondent submitted a risk management plan for the Facility to EPA on June 10, 2014. The risk management plan identified one substance, chlorine, as being present at the Facility in levels greater than its threshold quantity of 2,500 pounds, as set forth in 40 C.F.R. § 68.130, Table 1.

33. The RMP Regulations require owners and operators to conduct a worst-case scenario analysis for substances in a vessel, using the greatest amount held in a single vessel as the worst-case release quantity, in accordance with 40 C.F.R. § 68.25(b).

34. In its risk management plan filed on June 10, 2014, Respondent identified its Facility as a Program 1 facility, defined in 40 C.F.R. § 68.10, based on a worst-case scenario involving a 150-pound chlorine cylinder. Respondent calculated that an incident involving a 150-pound cylinder would impact zero people within an 87-mile radius as its worst-case release scenario.

35. EPA determined that Respondent selected the wrong-sized cylinder for its calculation of its worst-case scenario. During the inspection, EPA inspectors observed two (2) one-ton chlorine cylinders stored outside of the warehouse. Under the RMP regulations, Respondent was required to perform its worst-case scenario calculation on the largest cylinder, which was a one-ton (2,000-pound) cylinder, rather than a 150-pound cylinder, in accordance with 40 C.F.R. § 68.25(b).

36. Using a one-ton chlorine cylinders, EPA inspectors calculated a worst-case scenario radius of 1.3 miles for toxic endpoints, within which area resides a population of 3,545 people in 1,702 housing units. Because public receptors lie within this radius, Respondent was subject to the Program 2 requirements of the RMP Regulations because a covered process is subject to Program 2 requirements if, among other things, the worst-case scenario would result in a radius for toxic endpoints that is greater than the distance to any public receptor, and the process is not subject to the Occupational Safety and Health Administration ("OSHA") process safety management standard and does not fall under one of the ten NAICS codes listed in 40 C.F.R. § 68.10(d)(1). 40 C.F.R. § 68.10(c). Thus, by not selecting the largest cylinder for its worst-case release scenario calculation, Respondent incorrectly characterized its Facility as a Program 1 facility, rather than a Program 2 facility

37. Program 2 requirements for stationary sources in the RMP Regulations are much more stringent than those for Program 1 stationary sources, and include requirements for safety

information, hazard reviews, preparing operating procedures, training, maintenance, compliance audits, and incident investigations, at 40 C.F.R. Part 68, Subpart C.

38. Respondent failed to comply with the following Program 2 prevention requirements set forth in 40 C.F.R. Part 68, Subpart C:

   a. *Failure to Compile Process Safety Information.* The RMP Regulations require owners and operators of stationary sources to compile and maintain up-to-date safety information related to the regulated substances, processes, and equipment, including codes and standards used to design, build, and operate the process. *See* 40 C.F.R. § 68.48(a). EPA inspectors requested, but Respondent did not provide, any evidence that it had complied with its obligation to compile codes and standards used to design the storage process for chlorine at the Facility.

   b. *Failure to Conduct Hazard Review.* The RMP Regulations require owners and operators to conduct a review of the hazards associated with the regulated substances, processes and procedures; document such review; and ensure that problems identified are resolved in a timely manner. 40 C.F.R. § 68.50. EPA inspectors requested, but Respondent did not provide, any evidence that it had complied with its obligation to conduct a hazard review for the chlorine process.

   c. *Improper Storage of 150-pound Chlorine Cylinders*. The RMP Regulations require owners and operators to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices. 40 C.F.R. § 68.48(b). The term "recognized and generally accepted good engineering practices" includes the following industry standard for the proper storage of compressed gases: National Fire Protection Association 55, *Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks* (2005 ed.) ("NFPA 55"). At the time of the CAA Inspection, Respondent stored thirty-three (33) 150-pound chlorine cylinders inside the warehouse, for a total of 4,950 pounds. Based on information provided to EPA by Respondent, at times Respondent stores as many as seventy-five (75) 150-pound chlorine cylinders inside the warehouse. EPA inspectors observed in the warehouse the following deviations from the safety measures provided in industry standard NFPA 55:

      i. Industry standard NFPA 55 provides that toxic gases stored in amounts greater than 150 pounds must be stored in a gas cabinet, exhausted enclosure or a gas room. NFPA 55, § 7.9.2.1. Based on the observations of EPA inspectors, the warehouse at the Facility does not contain a gas cabinet or gas room, and does not constitute an exhausted enclosure with a separate, local exhaust system, as defined in Section 3.3.25 of NFPA 55.

      ii. Industry standard NFPA 55 provides that gas rooms must operate at negative pressure, be provided with exhaust ventilation systems, and be separated from other occupancies by a minimum of one hour of fire resistance. NFPA 55, § 6.4.1, 6.4.2, 6.4.4. The rationale for storing chlorine cylinders separately, in a flame-resistant area, is to prevent the cylinders' fusible plugs from melting in

the event of a facility fire, leading to the release of chlorine. Based on the observations of EPA inspectors, Respondent's warehouse did not operate at negative pressure, did not have an exhaust ventilation area, and was not separated from other occupancies by a minimum of one hour of fire resistance.

iii. Industry standard NFPA 55 states that a "gas detection system with a sensing interval not exceeding 5 minutes shall be provided" and that the gas detection system "shall monitor the exhaust system at the point of discharge from the gas cabinet, exhausted enclosure, or gas room. NFPA 55, § 7.9.3.2.1.1, 7.9.3.2.1.2. Based on the observations of EPA inspectors, Respondent's warehouse did not have a gas detection system to detect a chlorine leak.

d. *Improper Storage of One-Ton Chlorine Cylinders.* Industry standard NFPA 55 provides that the "outdoor storage or use of toxic or highly toxic compressed gases shall not be within 23 m (75 ft) of lot lines, streets, alleys, public ways or means of egress, or building not associated with such storage or use," unless a 2-hour fire barrier wall is present between the cylinders and the exposure. NFPA 55, § 7.9.2.2, 7.9.2.2.1. During the CAA Inspection, EPA inspectors observed that Respondent stored one-ton cylinders of chlorine outdoors in a location 70 feet from the street. The chlorine cylinders did not have a fire barrier wall between the cylinders and the street.

e. *Lack of Operating Procedures.* The RMP Regulations require owners or operators "to prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process." 40 C.F.R. § 68.52(a). Operating procedures must address, among other things, normal operations, emergency shutdown and operations; consequences of deviations; and equipment inspections. 40 C.F.R. § 68.52(b). Operating procedures are required for forklift operations involving the movement of both 150-pound chlorine cylinders and 1-ton chlorine cylinders, to provide one example. During the CAA Inspection, EPA inspectors requested, but Respondent did not provide, written operating procedures for the operators of the chlorine storage process.

f. *Lack of Employee Training.* The RMP Regulations require owners or operators to "ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in § 68.52 that pertain to their duties." 40 C.F.R. § 68.54(a). Refresher training must be provided at least every three years. 40 C.F.R. § 68.54(b). During the CAA Inspection, EPA inspectors requested, but Respondent did not provide, any evidence that Respondent had conducted initial or refresher employee training relevant to chlorine handling.

g. *Lack of Mechanical Integrity, Training in Maintenance, and Testing.* The RMP Regulations require owners or operators "to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment." 40 C.F.R. § 68.56(a). In addition, the owner or operator must "train each employee involved in

maintaining the on-going mechanical integrity of the process." 40 C.F.R. § 68.56(b). Finally, the owner or operator must "perform or cause to be performed inspections and tests on process equipment ... [following] recognized and generally accepted good engineering practices ... [in a] frequency ... consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience." 40 C.F.R. § 68.56(d). During the CAA Inspection, EPA inspectors requested, but Respondent did not provide, written procedures to maintain the on-going mechanical integrity of the process equipment for chlorine storage, or any evidence that employees had been trained in in mechanical integrity procedures, or that any inspections or tests or process equipment had been performed.

h. *Lack of Compliance Audit.* The RMP Regulations require owners or operators "to certify that they have evaluated compliance with the provisions of [Subpart C of the RMP Regulations] at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed." 40 C.F.R. § 68.58(a). During the CAA Inspection, EPA inspectors requested, but Respondent did not provide, any documentation that Respondent had conducted a compliance audit since operations began in 2012.

39. On or about August 1, 2019, Respondent ceased storage of one-ton cylinders of chlorine at the Facility.

40. In August 2018, Respondent completed the construction of a three-bay concrete storage structure for the storage of its 150-pound cylinders of chlorine and established administrative controls to limit the storage of chlorine cylinders to no more than fifteen (15) 150-pound cylinders in each of the three storage bays of the concrete storage structure.

41. Due to Respondent's changes at the Facility, Respondent no longer exceeds the threshold quantity, 2,500 pounds, for the storage of chlorine in a process in the RMP Regulations at 40 C.F.R. 68.130, Table 1. Accordingly, Respondent is no longer subject to the requirements of Section 112(r)(7) of the CAA or the RMP Regulations for the storage of chlorine at the Facility.

42. As a corporation, Respondent is, and at times referred to herein was, a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and the owner and operator of the Facility.

43. Respondent is, and at times referred to herein was, the owner and operator of a "stationary source," as the term is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R.§ 68.3.

44. The threshold quantity for chlorine is 2,500 pounds, pursuant to 40 C.F.R. § 68.130, Table 1.

45. EPA has determined that more than a threshold quantity of a regulated substance, chlorine, was present in a process at the Facility from 2012 to August 1, 2019, when Respondent ceased storing one-ton cylinders of chlorine at the Facility.

46. Respondent was required to have submitted a risk management plan to EPA in 2012, when a regulated substance, chlorine, was first present above a threshold quantity in a process, as required by 40 C.F.R. § 68.150(b)(3).

47. Given that Respondent did not submit a risk management plan for the Facility until June 2014, Respondent did not timely submit a risk management plan for the storage of chlorine at the Facility.

48. Moreover, the risk management plan filed by Respondent in June 2014 was incorrect because Respondent did not comply with the RMP Regulations' requirements for selecting the largest vessel storing chlorine for calculating worst-case scenario releases, and thus classified the Facility as a Program 1 rather than a Program 2 facility.

49. From at 2014 to August 1, 2019, Respondent was in violation of Section 112(r)(7) of the CAA, 40 C.F.R. § 7412(r)(7), and the RMP Regulations, 40 C.F.R. Part 68, at the Facility because Respondent was an owner or operator of a stationary source with more than a threshold quantity of a regulated substance, chlorine, present in a process at the Facility, but Respondent incorrectly calculated its worst case scenario, and improperly designated the Facility as a Program 1, rather than a Program 2, facility, is a violation of Section 68.25 of the RMP regulation, 40 C.F.R. § 68.25.

50. From 2012 to August 1, 2019, Respondent did not comply with the prevention requirements applicable to Program 2 facilities, at 40 C.F.R. Part 68, Subpart C:

    a. Respondent's failure to compile safety information related to the hazards of storing chlorine and its failure to conduct a hazard review of its chlorine storage process is a violation of Section 68.48(a) of the RMP Regulations, 40 C.F.R. § 68.48(a).

    b. Respondent's failure to conduct a hazard review of its chlorine storage process is a violation of Section 68.50 of the RMP Regulations, 40 C.F.R. § 68.50.

    c. Respondent's failure to store the 150-pound chlorine cylinders in accordance with the safety protection provided by industry-specific design codes and standards is a violation of Section 68.48(b) of the RMP Regulations, 40 C.F.R. § 68.48(b).

    d. Respondent's failure to store the two one-ton chlorine cylinders in accordance with the safety protection provided by industry-specific design codes and standards is a violation of Section 68.48(b) of the RMP Regulations. 40 C.F.R. § 68.48(b).

    e. Respondent's failure to prepare written operating procedures for its chlorine storage is a violation of the Section 68.52 of the RMP Regulations, 40 C.F.R. § 68.52.

f. Respondent's failure to provide initial and refresher training to its chlorine operators is a violation of the Section 68.54 of the RMP Regulations, 40 C.F.R. § 68.54.

g. Respondent's failure to prepare and implement procedures to maintain, train its employee in maintaining, and inspect and test its process equipment is a violation of the Section 68.56 of the RMP Regulations, 40 C.F.R. § 68.56.

h. Respondent's failure to conduct a compliance audit is a violation of Section 68.58 of the RMP Regulations, 40 C.F.R. § 68.58.

51. The duration of the violation is calculated from October 2014 to August 1, 2019, when Respondent removed the one-ton chlorine cylinders and stored 150-pound chlorine cylinders at the Facility in a manner that the process threshold did not exceed 2,500 pounds.

52. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its RMP Regulations at 40 C.F.R. Part 68, by failing to meet the requirements of Subparts C and G of the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

Count II
Failure to Comply with General Duty Clause Requirement to Design and Maintain a Safe Facility

53. The allegations of Paragraphs 1 through 52 of this Consent Agreement are incorporated herein by reference.

54. Based on information obtained during the CAA Inspection, EPA has determined that the Facility stores flammable and combustible chemicals in 330-gallon totes in the following amounts: methanol 100%, 65,000 gallons; acetone 100%, 1,353 gallons; isopropanol 99%, 5,000 gallons; and xylene, 5,000 gallons.

55. During the CAA Inspection, EPA inspectors observed hazardous chemicals at the Facility being stored as follows:

Indoors: 5-gallon containers of acetone, a Class IB flammable liquid, approximately one foot away from 330-gallon totes of liquid zinc orthophosphate, a corrosive;

Indoors: 330-gallon totes of methanol, a Class IB flammable, approximately two feet away from 55-gallon drums of sodium hydroxide solution, a corrosive; and

Outdoors: 330-gallon totes of methanol, a Class IB flammable liquid, approximately two feet away from 330-gallon totes of Albone, a strong oxidizing chemical, 330-gallon totes of STERN PAC, a corrosive, and 55-gallon drums of hydrochloric (muriatic) acid, a corrosive.

56. The flammable liquids, acetone and methanol, are incompatible with the corrosives and oxidizers identified above, orthophosphate, sodium hydroxide solution, Albone, STERN PAC, and hydrochloric acid.

57. Industry codes provide safety procedures for the storage of incompatible materials in containers greater than 5 pounds or 0.5 gallons. See International Fire Code (2012) ("IFC"), Chapter 27. Incompatibles must be separated by distances of at least 20 feet or by noncombustible partitions; liquids may be stored in flammable liquid storage cabinets and compressed gases in gas cabinets or exhausted enclosures; and materials that are incompatible are not to be stored within the same cabinet or exhausted enclosure. IFC § 2703.98.

58. During the CAA Inspection, EPA inspectors observed a 330-gallon tote (approximately 2,178 pounds) of methanol, a Class IB flammable liquid, being stored in the warehouse, which does not have fire protection, according to information provided to EPA by Respondent.

59. Industry codes provide that Class IB flammable liquids must not be stored in amounts greater than 120 pounds if the storage area is not protected from fires. IFC § 2703.1.1(1).

60. During the CAA Inspection, EPA inspectors observed methanol, classified as a Class IB flammable liquid, being stored outdoors in intermediate bulk storage containers made of rigid plastic of composite.

61. Industry codes prohibit the outdoor storage of intermediate bulk storage containers made of plastic containing flammable liquids. See National Fire Protection Association 30, Flammable and Combustible Liquid Code Handbook, 8th ed. (2008) ("NFPA 30"), Table 15.3 (Storage Limitations for Outside Storage). The containers must be metal if they are to be stored outdoors.

62. Since the issuance of the Order, Respondent has implemented the following improvements at the Facility:

    a. separated the storage of flammable chemicals from corrosive chemicals and oxidizing chemicals;

    b. constructed a new structure with a roof but no walls to safely store flammable chemicals outside; and

    c. replaced the plastic intermediate bulk containers with metal intermediate bulk containers.

63. EPA's investigation indicates that, prior to Respondent's compliance with the Order, the company failed to satisfy the General Duty Clause requirement to design and maintain safe facilities. In particular:

    a. Respondent failed to store flammable chemicals at safe distances from corrosive chemicals oxidizing chemicals, to provide protection consistent with the

requirements of the IFC;

b. Respondent failed to store flammable chemicals in a building with fire protection, to provide protection consistent with the requirements of the IFC; and

c. Respondent failed to store flammable liquids outside in appropriate non-plastic containers, to provide protection consistent with the requirements of NFPA 30.

64. Acetone, CAS No. 67-64-1, is an extremely hazardous substance pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) because it is flammable.

65. Methanol, CAS No. 67-56-1, is an extremely hazardous substance pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) because it is flammable.

66. The Facility handles and/or stores extremely hazardous substances as the term is used in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

67. As the owner and operator of a stationary source, with respect to the handling and storage of acetone and methanol, Respondent has a duty under the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe facility taking such steps as are necessary to prevent the accidental release of this extremely hazardous substance to the air.

68. Respondent violated the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), by failing to ensure that the storage of flammable chemicals at the Facility was designed and maintained safely to prevent accidental releases, by not separating incompatible materials, by not storing flammable chemicals in a fire-protected area and by storing flammable chemicals in containers not appropriate for their storage location.

69. In failing to comply with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

70. The duration of the violation is calculated from October 2014 to September 2018, when Respondent complied with the terms of the Order to ensure that the flammable chemicals were stored safely at the Facility.

EPCRA FINDINGS OF FACT AND CONCLUSIONS OF LAW

71. The allegations of Paragraphs 1 through 70 of this Consent Agreement are incorporated herein by reference.

72. On February 9, 2016, EPA conducted an inspection of the Facility pursuant to Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9604, to determine the Facility's compliance with Sections 302-212 of EPCRA, 42 U.S.C. §§ 11002-11022 ("EPCRA Inspection").

73. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and is subject to the assessment of civil penalties for the violations alleged herein.

74. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61.

75. Respondent is an "owner or operator" of the Facility as referenced in Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. §§ 355.2 and 355.30.

Count III
Failure to Comply with Section 311 of EPCRA

76. The allegations of Paragraphs 1 through 75 of this Consent Agreement are incorporated herein by reference.

77. Section 311 of EPCRA, 42 U.S.C. § 11021, as implemented by 40 C.F.R. Part 370, requires an owner or operator of a facility required to prepare or have available a Material Safety Data Sheet/Safety Data Sheet ("M/SDS") for a hazardous chemical in accordance with the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq*., and 29 C.F.R. § 1910.1200, and at which facility is present at any one time a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous substance ("EHS")) in a quantity equal to or greater than its applicable minimum threshold level for reporting ("MTL") or threshold planning quantity ("TPQ") established by 40 C.F.R. § 370.10, to submit either M/SDSs for, or a list identifying, those hazardous chemicals to the appropriate state emergency response commission ("SERC"), local emergency planning committee ("LEPC"), and local fire department with jurisdiction over the facility, on or before October 17, 1990, or within three months after meeting the MTL or TPQ.

78. The SERC for the Facility for purposes of inventory reporting under EPCRA Sections 311 and 312 is, and at all times relevant to this CAFO has been, the Pennsylvania Department of Labor and Industry, Bureau of Occupational Safety/Pennsafe Program, located at 651 Boas Street, Room 1600, in Harrisburg, Pennsylvania.

79. The LEPC for the Facility is the Luzerne County Local Emergency Planning Committee, located at 185 Water Street, in Wilkes-Barre, Pennsylvania.

80. Information obtained from Respondent during the EPCRA Inspection indicated that the following hazardous chemicals (referred to hereafter as "Hazardous Chemicals"), among other hazardous chemicals, were present at the Facility at levels equal to or exceeding MTLs during each of the calendar years 2014, 2015 and 2016 in the following amounts:

Chemical Name	**CAS Number**	**MTL (lbs)**	**Maximum Storage Quantity (lbs)**		
			2014	**2015**	**2016**
Aluminum chloride solution	7746-70-0	10,000	46,618	---	46,618

Aluminum chloride hexahydrate solution	7784-13-6	10,000	---	46,110	---
Aluminum sulfate solid	10043-01-3	10,000	48,000	48,000	48,000
Aluminum sulfate solution	10043-01-3	10,000	67,710	68,700	67,710
Calcium chloride dry	10043-52-4	10,000	419,050	---	419,050
Calcium chloride flake	10043-52-4	10,000	89,000	90,000	89,000
Calcium chloride pellets	10043-52-4	10,000	---	1,001,450	---
Calcium hydroxide	1305-62-0	10,000	60,000	80,000	60,000
Calcium hypochlorite	7778-54-3	10,000	50,000	50,000	50,000
Chlorine	7782-50-5	500	15,250	15,250	15,250
Citric acid	77-92-9	10,000	---	29,748	---
Citric acid anhydrous	77-92-9	10,000	37,560	---	37,560
Diatomaceous earth	68855-54-9	10,000	41,200	40,175	41,200
Ferric chloride solution	7705-08-0	10,000	93,584	91,228	93,584
Ferric sulfate solution	10028-22-5	10,000	30,000	62,549	30,000
Ferrous chloride solution	7758-94-3	10,000	12,631	---	12,631
Ferrous sulfate dry	7782-63-0	10,000	---	50,000	50,000
Ferrous sulfate solution	7720-78-7	10,000	30,000	30,000	30,000
Fluorosilicic acid solution	16961-83-4	10,000	46,880	49,560	46,880
Hydrochloric acid	7647-01-0	10,000	48,311	48,997	48,311
Hydrogen peroxide	7722-84-1	10,000	74,400	111,600	74,400
Magnesium chloride flakes	7791-18-6	10,000	19,200	19,200	19,200
Magnesium chloride pellets	7791-18-6	10,000	86,400	43,200	86,400
Methanol	67-56-1	10,000	31,255	29,637	31,255
Nitric acid solution 67%	7697-37-2	500	2,398	7,200	10,618
Phosphoric acid	7664-38-2	10,000	---	10,991	---
Poly aluminum chloride	39290-78-3	10,000	47,405	166,953	47,405
Potassium hydroxide solution	1310-58-3	10,000	44,600	47,722	44,600
Potassium permanganate	7722-64-7	10,000	11,904	47,068	11,904
Silicone dioxide silica sand	14808-60-7	10,000	113,850	107,050	113,850
Sodium aluminate solution	1302-42-7	10,000	48,421	47,482	48,421
Sodium bisulfite solution	7631-90-5	10,000	50,870	50,937	50,870
Sodium carbonate dense	497-19-8	10,000	88,200	88,200	88,200
Sodium carbonate lite	497-19-8	10,000	70,600	44,100	70,600
Sodium chloride (rock salt)	7647-14-5	10,000	695,800	566,300	695,800
Sodium chloride (solar salt)	7647-14-5	10,000	44,100	44,100	44,100
Sodium fluorosilicate	16893-85-9	10,000	36,000	42,000	36,000
Sodium hydroxide solid	1310-73-2	10,000	16,500	16,500	16,500
Sodium hydroxide solution	1310-73-2	10,000	96,044	95,010	96,044
Sodium hypochlorite solution	7681-52-9	10,000	168,760	147,950	168,760
Sodium thiosulfate dry	10102-17-7	10,000	---	---	13,200
Sulfur dioxide	7446-09-5	500	6,000	5,500	6,000
Sulfuric acid	7664-93-9	500	50,770	71,590	50,770

Trichloroisocyanuric acid	87-90-1	10,000	20,000	20,000	20,000
Zinc orthophosphate solution	7779-90-0	10,000	---	45,820	---
Total # of chemicals			38	40	40

81. According to information provided to EPA by Respondent, the first time Respondent submitted to the SERC any information pertaining to these Hazardous Chemicals or an M/SDS for any of these Hazardous Chemicals was on or about October 28, 2015, when the Respondent submitted an Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form") for calendar year 2014 to the SERC. The Chemical Inventory Form listed only one of the Hazardous Chemicals present at the Facility above MTLs during 2014.

82. According to information provided to EPA by Respondent, the first time Respondent submitted to the LEPC any information pertaining to these Hazardous Chemicals or M/SDS for these Hazardous Chemicals was in or about February 2013, when the Respondent submitted a list of hazardous chemicals to the LEPC as an attachment to the 2012-2013 Off-Site Response Plan Update. The attachment included only 15 of the Hazardous Chemicals present at the Facility.

83. According to information provided to EPA by Respondent, on or about March 28, 2017, Respondent submitted a revised Chemical Inventory Form for calendar year 2014 to the SERC and the LEPC. The revised Chemical Inventory Form did not list all of the hazardous chemicals present at the Facility during calendar year 2014; the Form was missing two of the Hazardous Chemicals present in a quantity exceeding the applicable MTL: ammonium sulfate solid and zinc orthophosphate solution.

84. The first time Respondent submitted a complete and accurate list of Hazardous Chemicals present at the Facility was on February 19, 2018, when Respondent submitted to the SERC and the LEPC, a list identifying all of the Hazardous Chemicals present at the Facility during calendar years 2014, 2015 and 2016 in quantities equal to or exceeding their respective MTLs.

85. Respondent failed to submit to the SERC and the LEPC, either an M/SDS for each of the Hazardous Chemicals, or a list identifying the Hazardous Chemicals as present at the Facility in quantities equal to or exceeding their respective MTLs, no later than three (3) months after the Hazardous Chemicals were present at the Facility in an amount equal to or greater than their respective MTLs.

86. Respondent has been the owner and operator of the Facility from September 2006 to the present.

87. As a corporation, Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and its regulations, 40 C.F.R. § 370.66.

88. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. § 370.66.

89. At the Facility, Respondent was engaged in a business where chemicals are either used, distributed, or are produced for use or distribution.

90. At the Facility, Respondent was an "employer" as that term is defined at 29 C.F.R. § 1910.1200(c).

91. Respondent was the owner or operator of a facility that is required to prepare or have available M/SDSs for the hazardous chemicals listed above under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

92. Each of the Hazardous Chemicals is a "hazardous chemical" as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66.

93. Pursuant to 40 C.F.R. § 370.10, the MTL for each of the Hazardous Chemicals is 10,000 pounds, except for chlorine, sulfur dioxide, sulfuric acid, and nitric acid 67%, each of which has an MTL of 500 pounds.

94. Respondent was required to submit to the SERC and the LEPC either the M/SDS for the Hazardous Chemicals, or a list identifying the Hazardous Chemicals as being present at the Facility, no later than three (3) months after each of the Hazardous Chemicals was first present at the Facility in an amount equal to or greater than its MTL.

95. Respondent's failure to submit to the SERC and LEPC either an M/SDS for each of the Hazardous Chemicals, or a list identifying the Hazardous Chemicals as present at the Facility in quantities equal to or exceeding their respective MTL, no later than three (3) months after each Hazardous Chemical was present at the Facility in an amount equal to or greater than its respective MTL, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

96. In failing to comply with Section 311 of EPCRA, 42 U.S.C. § 11021, Respondent is subject to the assessment of penalties under Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2).

Count IV
Failure to Comply with Section 312 of EPCRA - 2016

97. The allegations of Paragraphs 1 through 96 of this Consent Agreement are incorporated herein by reference.

98. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available an M/SDS for a hazardous chemical in accordance with the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 et seq., and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable MTL or TPQ to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Chemical Inventory Form identifying

the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

99. According to information provided to EPA by Respondent, Respondent had present at the Facility 40 hazardous chemicals in amounts exceeding their respective MTLs during calendar year 2016.

100. Respondent did not submit a Chemical Inventory Form to the SERC or the LEPC for hazardous chemicals present at the Facility in amounts exceeding their respective MTLs during calendar year 2016 by March 1, 2017, nor did it provide the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d). Respondent submitted a complete and accurate Chemical Inventory Form for chemicals present during calendar year 2016 on February 19, 2018.

101. In failing to comply with Section 312 of EPCRA, 42 U.S.C. § 11022, Respondent is subject to the assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1).

Count V
Failure to Comply with Section 312 of EPCRA - 2015

102. The allegations of Paragraphs 1 through 101 of this Consent Agreement are incorporated herein by reference.

103. According to information provided to EPA by Respondent, Respondent had present at the Facility 40 hazardous chemicals in amounts exceeding their respective MTLs during calendar year 2015.

104. Respondent did not submit a Chemical Inventory Form to the SERC or the LEPC for hazardous chemicals present at the Facility in amounts exceeding their respective MTLs during calendar year 2015 by March 1, 2016, nor did it provide the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d). Respondent submitted a Chemical Inventory Form for chemicals present during calendar year 2015 on February 19, 2018.

105. In failing to comply with Section 312 of EPCRA, 42 U.S.C. § 11022, Respondent is subject to the assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1).

Count VI
Failure to Comply with Section 312 of EPCRA - 2014

106. The allegations of Paragraphs 1 through 105 of this Consent Agreement are incorporated herein by reference.

107. According to information provided to EPA by Respondent, Respondent had present at the Facility 38 hazardous chemicals in amounts exceeding their respective MTLs during calendar year 2014.

108. Respondent did not submit a Chemical Inventory Form to the SERC or the LEPC for hazardous chemicals present at the Facility in amounts exceeding their respective MTLs during calendar year 2014 by March 1, 2015, nor did it provide the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d). Respondent submitted a complete and accurate Chemical Inventory Form for chemicals present during calendar year 2014 on February 19, 2018.

109. In failing to comply with Section 312 of EPCRA, 42 U.S.C. § 11022, Respondent is subject to the assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1).

SETTLEMENT

110. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the following paragraph.

Civil Penalty

111. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a total civil penalty in the amount of **ONE HUNDRED SEVENTY TWO THOUSAND AND EIGHTY-TWO DOLLARS ($172,082)**, which total includes **NINETY-THREE THOUSAND SEVEN HUNDRED AND SIXTY-TWO DOLLARS ($93,762)** for alleged violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r) ("CAA civil penalty"), and **SEVENTY-EIGHT THOUSAND THREE HUNDRED AND TWENTY DOLLARS ($78,320)** for alleged violations of Sections 311 and 312 of EPCRA, 42 U.S.C. § 11021 and 11022 ("EPCRA civil penalty"), which Respondent shall be liable to pay in accordance with the terms set forth below.

112. The CAA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012), and the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

113. The EPCRA civil penalty is based upon EPA's consideration of a number of factors, including the following: the nature, circumstances, extent and gravity of the violation or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental*

Response, Compensation and Liability Act (September 30, 1999), which reflects the statutory penalty criteria and factors set forth at Section 325(b)(1)(C) of EPCRA, the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

114. Payment of the CAA civil penalty and the EPCRA civil penalty, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, CAA-EPCRA-03-2019-0107;

b. All checks in payment of the CAA civil penalty and the EPCRA civil penalty shall be made payable to the "United States Treasury";

c. All payments made by check in payment of the CAA civil penalty and the EPCRA civil penalty and sent by regular mail shall be addressed and mailed to:

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

d. For additional information concerning other acceptable methods of payment of the civil penalty amounts see:

https://www.epa.gov/financial/makepayment

e. A copy of Respondent's checks or other documentation of payment of the penalties using the method selected by Respondent for payment shall be sent simultaneously to:

Cynthia T. Weiss
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029
weiss.cynthia@epa.gov

115. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

116. Payment of the CAA civil penalty and the EPCRA civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

117. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).

118. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives – Case Management, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

119. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

120. Failure by the Respondent to pay the CAA civil penalty and the EPCRA civil penalty assessed by the Final Order in accordance with the terms of this CAFO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

121. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

122. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.

123. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete

and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

124. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

125. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CAA or EPCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

126. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CAA and EPCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

127. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that they are fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

128. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

129. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

For Respondent: Main Pool and Chemical, Inc.

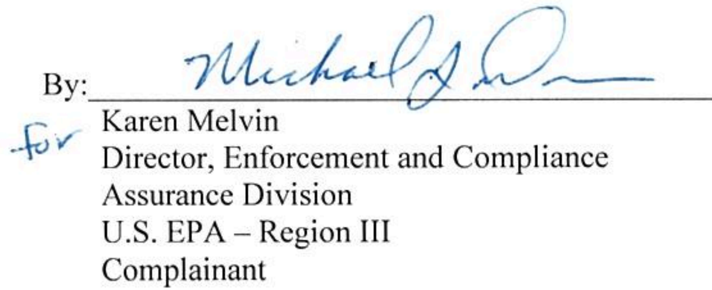
Date: 8/30/2019

By: Thomas O'Malley
Thomas O'Malley
President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9/13/19



By: ______________________

for Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

For the Complainant:

Date: 9/3/19

By: ______________________

Cynthia T. Weiss
Sr. Assistant Regional Counsel

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

U.S. EPA-REGION 3-RHC
FILED-17SEP2019AM11:38

In the Matter of:	
Main Pool and Chemical, Inc. **110 Commerce Road** **Dupont, Pennsylvania 18641,**	**EPA Docket Nos. CAA-03-2019-0107** **EPCRA-03-2019-0107**
Respondent.	**FINAL ORDER**
Main Pool and Chemical, Inc. **110 Commerce Road** **Dupont, Pennsylvania 18641,**	
Facility.	**Proceeding under Sections 112(r) and 113 of the Clean Air Act, 42 U.S.C. §§ 7412(r) and 7413, and Sections 311, 312 and 325 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11011, 11012 and 11045**

FINAL ORDER

Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Main Pool and Chemical, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to [Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Combined Enforcement Policy for CAA Section 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012), and the statutory factors set forth in Section 113(e) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(e), and the penalty criteria and factors set forth in EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act*

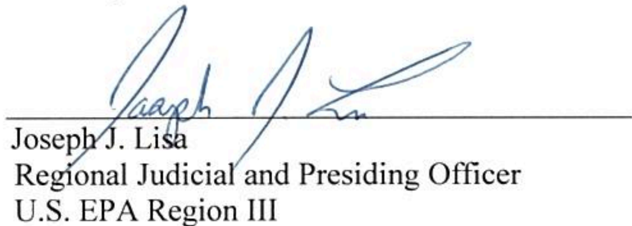
and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***ONE HUNDRED SEVENTY-TWO THOUSAND EIGHTY-TWO DOLLARS ($172,082)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA, and EPCRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 17, 2019
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:	
Main Pool and Chemical, Inc. **110 Commerce Road** **Dupont, Pennsylvania 18641,**	**EPA Docket Nos. CAA-03-2019-0107** **EPCRA-03-2019-0107**
Respondent.	
Main Pool and Chemical, Inc. **110 Commerce Road** **Dupont, Pennsylvania 18641,**	
Facility.	**Proceeding under Sections 112(r) and 113 of the Clean Air Act, 42 U.S.C. §§ 7412(r) and 7413, and Sections 311, 312 and 325 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11011, 11012 and 11045**

CERTIFICATE OF SERVICE

I certify that on SEP 1 7 2019, the original and one (1) copy of the foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Certified Mail, to:

Timothy P. Polishan
Kelley, Polishan & Solfanelli, LLC
259 South Keyser Avenue
Old Forge PA 18518

Copies served via Hand Delivery or Inter-Office Mail to:

Cynthia T. Weiss
Senior Assistant Regional Counsel
ORC – 3RC20
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Mary Hunt
Enforcement Officer
ECAD – 3ED12
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Anne Gilley
Enforcement Officer
ECAD – 3ED12
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: SEP 1 7 2019

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

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