

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Steven Schlang  
Name of Case Attorney

9/30/14  
Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number CAA-01-2014-0021

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

The City of Fall River, MA  
One Government Center  
Fall River, MA 02722

Total Dollar Amount of Receivable \$ 5,000

Due Date: 10/30/14

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

\_\_\_\_\_  
Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

**BY HAND**

September 30, 2014

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency-Region 1  
5 Post Office Square, Suite 100  
Mail Code ORA18-1  
Boston, MA 02109-3912

Re: In the Matter of The City of Fall River, Massachusetts  
Docket No. CAA-01-2014-0021

Dear Ms. Santiago:

Enclosed are the original and one copy of a Consent Agreement and Final Order for filing in the above-referenced matter.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Schlang".

Steven Schlang  
Enforcement Counsel

Enclosures

cc: Christy DiOrio

RECEIVED

SEP 30 2014

EPA ORC WS  
Office of Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

SEP 30 2014

EPA ORC  
Office of Regional Hearing Clerk

MEMORANDUM

**DATE:** September 29, 2014

**FROM:** Steven Schlang, Senior Enforcement Counsel  
Jim Gaffey, Chemical Engineer, RCRA, EPCRA, and Federal Programs Unit, OES

**TO:** LeAnn Jensen, Regional Judicial Officer

**RE:** Proposed Administrative Consent Agreement and Final Order  
for *In the Matter of City of Fall River, Massachusetts*

Docket No. CAA-01-2014-0021

Enclosed is a proposed Consent Agreement and Final Order ("CAFO") that has been signed by both parties and is now being submitted for your approval in accordance with 40 C.F.R. § 22.18(b).

Please note that, consistent with 40 C.F.R. §§ 22.13(b) and 22.18(b), this CAFO both commences and concludes the matter referenced above and, if signed by you, will initiate and resolve the civil administrative penalty liability of Respondent City of Fall River ("Respondent") for violations of Section 112(r)(7) of Section 112(r)(7) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(7), and its implementing regulations found at 40 C.F.R. Part 68 ("Risk Management Plan Rule").

The enclosed CAFO requires Respondent to pay a total civil penalty of \$5,000 to resolve liability for the CAA violations alleged by EPA. In addition, Respondent will perform a Supplemental Environmental Project ("SEP"), costing approximately \$449,000, which will eliminate the use of toxic chlorine gas at its drinking water treatment facility. Please note that EPA Region 1 sought and received a waiver from EPA Headquarters, allowing Fall River to pay less than the 25% gravity amount recommended in EPA's SEP Policy. On July 24, 2014, EPA Headquarters agreed to this reduced penalty because, among other reasons, the SEP is a pollution prevention project that will improve public safety; the SEP honors the call of environmental justice advocates and the Chemical Safety Board to use safer chemicals at facilities such as this; the SEP costs more than EPA's original penalty offer; and the City has limited financial resources to both pay a large penalty and complete an important SEP such as this.

The stipulated penalty provisions for failing to perform the SEP also differ from the Region's traditional approach. Use of daily stipulated penalties is fairer to Respondent in this context, where the SEP costs more than EPA's original penalty offer. Moreover, daily stipulated penalties are consistent with guidance that Headquarters currently is developing on stipulated penalties.

Once the Final Order has been signed, EPA will file the fully executed CAFO with the Regional Hearing Clerk, thereby resolving this matter. This settlement does not have any public notice requirements.

cc: Christy DiOrio

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of: )  
)  
**City of Fall River, Massachusetts,** )  
)  
Respondent )  
)  
)  
)  
Proceeding under Section 113(a) of the )  
Clean Air Act, 42 U.S.C. § 7413(a). )  
\_\_\_\_\_ )

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. CAA-01-2014-0021

Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), alleges that Respondent City of Fall River, Massachusetts (“Respondent” or “Fall River”), has violated Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and its implementing regulations found at 40 C.F.R. Part 68.

EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits” (“Consolidated Rules” or “Part 22”), EPA and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of EPA and Respondent, it is hereby ordered and adjudged as follows:

**RECEIVED**

**SEP 30 2014**

EPA ORC WS  
Office of Regional Hearing Clerk

## I. STATUTORY AND REGULATORY AUTHORITY

1. Section 112(r) of the Act, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5), 42 U.S.C. § 7412(r)(5), requires EPA to establish for each such substance a threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of certain regulated substances, including a requirement that an owner or operator of certain stationary sources prepare and implement a risk management plan (“RMP”).

2. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), EPA promulgated 40 C.F.R. §§ 68.1-68.220 (“Part 68”).

3. Forty C.F.R. § 68.130 lists the substances, and their associated threshold quantities, regulated under Part 68.

4. Under 40 C.F.R. §§ 68.10 and 68.12, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by June 21, 1999. In particular, each process in which a regulated substance is present in more than a threshold quantity (“covered process”) is subject to one of three programs. Under 40 C.F.R. § 68.12(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is less than the distance to any public receptor. Under 40 C.F.R. § 68.12(d), a covered process is

subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in certain NAICS codes or subject to the OSHA process safety management standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

5. Under Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

6. Sections 113(a) and (d) of the Act, 42 U.S.C. §§ 7413(a) and (d), provide for the assessment of civil administrative penalties for violations of the Act, including violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r). EPA has obtained from the United States Department of Justice a waiver of the twelve-month limitation on EPA's authority to initiate administrative cases.

## **II. GENERAL ALLEGATIONS**

7. Respondent is the current owner and operator of the Fall River Water Filtration Plant located at 1831 Bedford Street in Fall River, Massachusetts 02723 (the "Facility").

8. Fall River was incorporated as a city in Massachusetts in 1854.

9. As a municipal corporation, Fall River is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

10. At the Facility, Fall River processes, handles, and stores chlorine, which is an extremely hazardous toxic substance listed under 40 C.F.R. § 68.130.

11. Chlorine is a toxic substance that is normally shipped and stored as a liquefied compressed gas. Chlorine is a heavier-than-air gas, is non-flammable, and is a strong oxidizer. Chlorine causes respiratory distress and may burn skin, eyes, and lungs. Effects of inhalation range from headaches, nausea, and lung irritation to severe eye, nose, and respiratory distress.

Inhaling high concentrations of chlorine gas can be lethal. The substance is highly reactive and will readily mix with other substances causing further hazards. In the presence of moisture, chlorine becomes highly corrosive.

12. Pursuant to 40 C.F.R. § 68.130, any facility storing more than 2,500 pounds of chlorine is subject to the RMP regulations of 40 C.F.R. Part 68.

13. The Facility is a “stationary source,” as that term is defined in 40 C.F.R. § 68.3.

14. Respondent is the “owner or operator,” as that term is defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

15. The Facility, which began operations in the mid-1970s, is a rapid sand filtration plant designed to produce potable drinking water for municipal distribution for use by the citizens of Fall River and three surrounding communities. Chlorine gas is used in the treatment process to ensure that no levels of bacteria are present that may pose problems to the public health, safety and welfare.

16. On June 18, 1999, Respondent submitted an initial Program 2 RMP for its use, storage, and handling of chlorine at the Facility (the “1999 RMP”).

17. On June 18, 2004, Respondent submitted a required five-year updated RMP for its use, storage, and handling of chlorine at the Facility (the “2004 RMP”).

18. According to the 1999 RMP and the 2004 RMP, the Facility used, stored, or handled up to 14,000 pounds of chlorine at those times, well over the 2,500 pound threshold cited in 40 C.F.R. § 68.130, Table 1.

19. EPA conducted a previously-announced inspection of the Facility on February 19, 2013 (the “Inspection”). Authorized EPA inspectors, the Fall River Fire Department Right-to-Know Officer, and Mr. Ted Kaegel, Fall River’s Director of Water Treatment and Resources were present during the Inspection. The Inspection was conducted to determine the Facility’s



compliance with Sections 302-312 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11002–11022, and Sections 112(r)(7) and 112(r)(1) of the CAA, 42 U.S.C. §§ 7412(r)(7) and 7412(r)(1), the RMP accident prevention program and the General Duty Clause, respectively.

20. At the time of the Inspection, the Facility had seven (7) two-ton cylinders of chlorine (weighing approximately 14,000 pounds), in a storage room (the “Chlorine Storage Room”). Chlorine is pumped from the chlorine storage room into the Chlorinator Room, where the chlorine is injected into the water treatment process. The EPA Inspection confirmed that the Facility continued to use, store, and handle approximately 14,000 pounds of chlorine on a routine basis.

21. During the Inspection, EPA inspectors observed that a single, floor-level inlet ventilation port, which was the only source of fresh air supplied to the Chlorine Storage Room, was blocked with a fitted plywood cover, effectively blocking any fresh air from flowing into the room.

22. EPA Inspectors also noted the following issues, among others:

(a) Mr. Kaegel, who had managed the Facility since February 2, 2005, stated that he was not aware of any obligations under the RMP Program and consequently had not updated the RMP Program during his tenure as director.

(b) At the time of the Inspection, there was no information available about a mechanical integrity/maintenance program for the chain hoist used to move chlorine cylinders. Additionally, information about the safety and functionality of chlorine detectors and analyzers was unavailable.

23. The endpoint for a worse case release of chlorine at the Facility is greater than the distance to a public receptor.

24. As the owner and operator of a stationary source that has more than the threshold amount of a regulated substance in a covered process, Respondent is subject to the RMP provisions of Part 68.

25. In particular, Respondent's storage and handling of chlorine is subject to the requirements of Program 2, in accordance with the requirements found in 40 C.F.R. § 68.10(c).

26. Pursuant to 40 C.F.R. § 68.190(b)(1), Respondent was required to review, update, and resubmit the Facility's RMP no later than June 18, 2009.

27. Respondent failed to review, update, and resubmit its RMP in 2009. Respondent updated and resubmitted an RMP on October 28, 2013, after EPA's Inspection and issuance of an administrative compliance order ("AO"). After receipt of the AO, Respondent also made many modifications to its RMP program and submitted documentation of compliance with the regulations cited in the counts below.

### **III. CAA VIOLATIONS**

#### **COUNT 1: FAILURE TO DEVELOP A MANAGEMENT SYSTEM**

28. The allegations in paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

29. Pursuant to 40 C.F.R. § 68.15, an owner or operator of a stationary source subject to Part 68 must comply with the requirements of 40 C.F.R. Part 68 by developing and/or maintaining a management system ("Management System") to oversee the implementation of the risk management program elements at the Facility.

30. As part of the Management System, Respondent was required to, pursuant to 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, submit and/or update a Risk Management Plan every five years. Pursuant to 40 C.F.R. § 68.190(b)(1), Respondent was required to review, update, and

resubmit the Facility's RMP no later than June 18, 2009.

31. At the time of the Inspection, Respondent had failed to develop a management system, as required by 40 C.F.R. § 68.15, regarding its risk program at the Facility.

32. During the Inspection, Respondent was unable to produce documentation assigning a qualified person or position that had the overall responsibility for the development, implementation, and integration of the risk management program elements. Additionally, Respondent failed to document other persons responsible for implementing individual requirements of the risk management program and define the lines of authority through an organization chart or similar document.

33. During the Inspection, Respondent was also unable to produce documentation demonstrating that it had reviewed and/or updated its Risk Management Plan ("RMP") within five years, as required by 40 C.F.R. §§ 68.190(a) and (b)(1). The five-year resubmittal was due in June 2009. The update was not made until October 2013.

34. During the Inspection, Mr. Kaegael, told the EPA inspectors that he was not aware of any obligations under the RMP Program and consequently had not updated the Facility's RMP during his tenure as director. The 2004 submittal identified Linda Correia as the person responsible for implementing the facility's RMP. Mr. Kaegael replaced Ms. Correia as the Director of Treatment and Resources in 2005. The 2013 submittal identified Ted Kaegael as the person responsible for implementing the facility's RMP.

35. Respondent failed to develop or maintain review, update, and resubmit its RMP in 2009 or at any subsequent time until October 28, 2013.

36. Respondent failed to develop a Management System to oversee the implementation of the risk management program elements at the Facility.

37. By failing to develop a Management System from at least June 18, 2009 to

October 28, 2013, Respondent violated Section 112(r)(7)(E) of the Act, 42 U.S.C.

§ 7412(r)(7)(E), and 40 C.F.R. § 68.15.

**COUNT II: FAILURE TO CONDUCT A HAZARD REVIEW**

38. The allegations in paragraphs 1 through 37 are incorporated by reference as if fully set forth herein.

39. Pursuant to the Program 2 Prevention Program requirements in 40 C.F.R. Part 68, Subpart C, one of Respondent's obligations was to conduct a review of the hazards ("hazard review") associated with the regulated substances, processes, and procedures. See 40 C.F.R. §§ 68.12 and 68.50. The review must identify the hazards associated with the process and regulated substances, opportunities for equipment malfunctions, and human errors that could cause an accidental release; the safeguards used or needed to control the hazards or prevent equipment malfunctions or human error; and any steps used or needed to detect or monitor releases. The hazard review must determine whether the process is designed, fabricated, and operating in accordance with industry standards. Respondent must document the hazard review, ensure that any problems identified are resolved in a timely manner, and update the hazard review at least once every five years. Respondent must also conduct a new review whenever a major change in the process occurs. Pursuant to 40 C.F.R. § 68.200, Respondent must keep records of this review for five years.

40. Respondent's 2004 updated RMP report referred to a hazard review having been conducted. During the Inspection, however, Respondent failed to produce documentation of the 2004 hazard review or any subsequent, updated hazard reviews.

41. During the Inspection, Mr. Kaegel also told EPA inspectors that the Facility's chlorinator system was upgraded in or around 2005. The Respondent, however, failed to produce an update of its hazard review despite this major change until after EPA's Inspection

and issuance of the AO. Accordingly, Respondent failed to conduct and/or update a hazard review for its chlorine process from at least 2005 to October 28, 2013.

42. Also, although 40 C.F.R. §§ 68.50(b) and (c) require the hazard review to determine that the processes are designed, fabricated, and operated in accordance with industry standards and, if not, to fix such problems, Respondent failed to do so until after the Inspection, as revealed by the following two problems: (1) the facility failed to provide adequate ventilation to the chlorine storage room and chlorinator room. During the inspection, EPA inspectors observed that a single, floor-level inlet ventilation port, which was the only source of fresh air supplied to both the chlorine storage room and chlorinator room, was blocked with a fitted plywood cover, effectively blocking any fresh air from flowing into the rooms. The accepted industry standards for ventilation can be found in The Chlorine Institute's Pamphlet # 155 *Water and Wastewater Operators Chlorine Handbook* Section 7.3; and (2) the facility did not have the chlorine piping and valve systems properly labeled and/or tagged. The Chlorine Institute's Pamphlet 6, Section 10 recommends that chlorine lines should be readily identifiable. A common way of identifying piping that contains hazardous materials is set forth in American Society of Mechanical Engineers, Publication A13.1-2007, *Scheme for the Identification of Piping Systems*. Among other things, that publication recommends labeling the piping with information on the content and direction of flow.

43. By failing to conduct and/or update its hazard review and keep documentation of such from, at least, 2004 to after the Inspection, Respondent violated Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), and 40 C.F.R. §§ 68.12, 68.50 and 68.200.

**COUNT III: FAILURE TO IMPLEMENT MAINTENANCE PROGRAM**

44. The allegations in paragraphs 1 through 43 are incorporated by reference as if fully set forth herein.

45. Pursuant to 40 C.F.R. § 68.56, Respondent is required to, among other things, prepare and implement procedures to maintain the ongoing mechanical integrity of process equipment. Respondent must also perform inspections and tests on process equipment, following recognized and generally accepted good engineering practices. Records documenting compliance with this requirement shall be maintained pursuant to 40 C.F.R. § 68.200.

46. At the time of the Inspection, Respondent was unable to produce documents pertaining to maintenance and testing programs for its chain hoist.

47. Respondent was also unable to document the calibration and maintenance of the Facility's chlorine detectors. Further documentation pertaining to the safety and functionality of the chlorine detectors and analyzers was also unavailable.

48. Respondent was unable to demonstrate that it had a program in place to insure that all components of the chlorine process were tested or replaced on a preventive maintenance basis. At the time of the Inspection, there was no record of periodic preventative inspections, maintenance, or testing conducted by Facility personnel.

49. Accordingly, Respondent failed to prepare and implement procedures to maintain the ongoing mechanical equipment used in Respondent's chlorine process. After the Inspection, Respondent revised its maintenance program.

50. By failing to prepare and implement procedures to maintain the ongoing mechanical integrity of process equipment Respondent violated Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E) and 40 C.F.R. § 68.56.

#### **COUNT IV: FAILURE TO CONDUCT COMPLIANCE AUDITS**

51. The allegations in paragraphs 1 through 50 are incorporated by reference as if fully set forth herein.

52. Pursuant to 40 C.F.R. § 68.58, Respondent was required to conduct compliance audits at least every three years to verify that its procedures and practices were adequate and being followed and keep documentation of such. Although Respondent's 2004 updated RMP report indicated that a compliance audit had been performed, Respondent was unable to produce the documents at the Inspection. Further, Respondent was unable to demonstrate that compliance audits were performed subsequent to 2004.

53. Since, at least, 2007, Respondent failed to conduct compliance audits every three years to ensure that its procedures and practices pertaining to its chlorine process were adequate and being followed.

54. By failing to prepare and implement at least two compliance audits pertaining to its chlorine process, Respondent violated Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E) and 40 C.F.R. § 68.58.

#### **IV. TERMS OF SETTLEMENT**

55. Respondent certifies that it has corrected the alleged violations cited in this CAFO and will operate the Facility in compliance with Section 112(r) of the CAA and the regulations promulgated thereunder at 40 C.F.R. Part 68.

56. Respondent agrees that EPA has jurisdiction over the subject matter alleged in this CAFO and hereby waives any defenses it might have as to jurisdiction and venue.

57. Respondent acknowledges that it has been informed of its right to request a hearing in this proceeding and hereby waives its right to contest the allegations, its right to a

judicial or administrative hearing on any issue of law or fact set forth in this CAFO; and its right to appeal the Final Order.

58. Without admitting or denying the facts and violations alleged in this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein.

### **Supplemental Environmental Project**

59. As a Supplemental Environmental Project (“SEP”), Respondent shall eliminate the use of chlorine gas at Respondent’s Facility (“Chlorine Elimination SEP”) and use liquid sodium hypochlorite, a less dangerous chemical, as a substitute for the chlorine gas. The SEP is further described in Appendix A and B, which appendices are herein incorporated by reference and are enforceable under this CAFO. The parties agree that this Chlorine Elimination SEP is intended to secure significant public health benefits by protecting workers, emergency responders, and the community from the risk of chlorine gas releases.

60. **Satisfactory Completion of SEP:** Respondent shall satisfactorily complete the SEP according to the requirements set forth in Appendix A and the schedule set forth in Appendix B. The SEP is projected to cost approximately \$449,000 and will also involve additional ongoing operational costs. Some of the key elements required for satisfactory completion of the Chlorine Elimination SEP include the following:

- a. As further described in Appendix A, conformance to standards and guidelines for construction and operation of public water systems to, among other things, ensure proper construction of the new sodium hypochlorite disinfectant system and minimize the amount of perchlorate contained in the sodium hypochlorite;
- b. Review and approval of project documents by the Massachusetts Department of Environmental Protection before construction;



- c. Demolition and removal of chlorine-related equipment;
- d. Installation of new sodium hypochlorite tanks, pumps, piping, instrumentation and controls;
- e. Modifications of facility necessary to support the installation of the new equipment (e.g., HVAC system, support structures);
- f. Construction and operation of a temporary sodium hypochlorite feed system during construction;
- g. Operational safeguards to minimize sodium hypochlorite decomposition;
- h. Submission of semi-annual progress reports on July 1 and January 31 until SEP is completed, as set out in paragraph 61;
- i. Completion of the SEP, including interim deadlines, in accordance with the deadlines set out in Appendix B. The projected date for the SEP system becoming operational is December 31, 2016. The projected date for construction completion and SEP project closeout is February 28, 2017.

61. **Semi-annual progress reports:** The semi-annual progress reports referenced in paragraph 60(h) above shall be submitted by electronic mail to Jim Gaffey, [gaffey.jim@epa.gov](mailto:gaffey.jim@epa.gov), and Steven Schlang, [schlang.steven@epa.gov](mailto:schlang.steven@epa.gov). They shall provide a brief description of the work completed to date on the SEP. If Respondent anticipates any difficulties meeting future deadlines, the semi-annual progress reports shall state the reasons for such difficulties and describe steps that Respondents has taken to minimize delays.

### **SEP Completion Report**

62. After completion of the Chlorine Elimination SEP, Respondent shall send an electronic mail message to Jim Gaffey, [gaffey.jim@epa.gov](mailto:gaffey.jim@epa.gov), and Steven Schlang, [schlang.steven@epa.gov](mailto:schlang.steven@epa.gov), to confirm that chlorine gas has been eliminated from the Facility and

that liquid sodium hypochlorite is being used in all former chlorine-based operations.

Respondent shall also submit a written SEP Completion Report **within 30 days** of completing the SEP. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any implementation problems encountered and the solutions thereto;
- c. Itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, or wire transfer records that specifically identify and itemize the individual costs associated with the SEP. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such;
- d. Certification that the SEP has been fully completed;
- e. A description of the environmental and public health benefits resulting from the implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible);
- f. A statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the SEP; and
- g. The following statement, signed by Respondent's officer, under penalty of law, attesting that the information contained in the SEP Completion Report is true, accurate, and not misleading:

63. *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.* Respondent shall submit the SEP Completion Report by first class mail or any other commercial delivery service, to:

Steven Schlang  
Senior Enforcement Counsel (Mail Code OES 04-4)  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912;

and

Jim Gaffey  
Chemical Engineer (Mail Code OES 05-1)  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912.

64. Respondent shall maintain, for a period of three (3) years from the date of submission of the SEP Completion Report, legible copies of all research, data, and other information upon which the Respondent relied to write the SEP Completion Report and shall provide such documentation within fourteen (14) business days of a request from EPA.

65. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to paragraph 68 below.

66. After receipt of the SEP Completion Report described in paragraph 62 above, EPA will notify Respondent in writing: (i) identifying any deficiencies in the SEP Completion Report itself and granting Respondent an additional thirty (30) days to correct any deficiencies; or (ii) indicating that the project has been completed satisfactorily; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with paragraph 68 herein.

67. If EPA elects to exercise options (i) or (iii) in paragraph 66 above, Respondent

may object in writing to the notice of deficiency given pursuant to this paragraph within ten (10) business days of receipt of such notice, except that this right to object shall not be available if EPA found that the project was not completed satisfactorily because Respondent failed to implement or abandoned the project. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's objection to reach agreement on changes necessary to the SEP or SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period as may be extended by the written agreement of both EPA and Respondent, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding on Respondent. Respondent agrees to comply with any requirements imposed by EPA that are not inconsistent with this CAFO as a result of any failure to comply with the terms of this CAFO. In the event that the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent in accordance with paragraph 68 herein.

**Stipulated Penalties for SEP Obligations**

68. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. For failure to meet interim deadlines in Appendix B, submit required semi-annual progress reports, and/or provide a SEP Completion Report, Respondent shall pay \$500 per day for the first thirty (30) days of violation; \$750 per day for the next sixty days of violation; and \$1,000 per day for each day of violation thereafter until the deadline is achieved or the report is submitted;
- b. For failure to satisfactorily complete the SEP as described in the CAFO and Appendix A (including, for example, abandoning the SEP), Respondent shall

pay \$1,000 per day for the first thirty (30) days of violation; \$1,500 per day for the next sixty days of violation; and \$2,000 per day for each day of violation thereafter, but the total stipulated penalty in this subsection shall not exceed \$200,000.

69. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

70. Stipulated penalties as set forth in paragraph 68 above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

71. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 77(b) and (c). Interest and late charges shall be paid as stated in paragraph 73.

72. Payment of stipulated penalties shall be in addition to any other relief available under federal law. EPA may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO.

73. **Collection of Unpaid Stipulated Penalties for SEP:** Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that a stipulated penalty relating to the performance of SEPs pursuant to paragraphs 68-71, above, is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any

portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

74. Respondent hereby certifies the truth and accuracy of each of the following:

a. As of the date of executing this CAFO, Respondent is not required to perform or develop the Chlorine Elimination SEP by any federal, state, or local law or regulation. Nor is Respondent required to perform or develop the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements.

b. Respondent is not party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the Chlorine Elimination SEP. To the best of Respondent's knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

c. The SEP is not a project that Respondent was planning or intending to

construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

d. Respondent has not received and will not receive credit for the SEP in any other enforcement action; and

e. Respondent has not received and will not receive any reimbursement for any portion of the SEP from any other person.

75. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall state that this project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act.

#### **Civil Penalty Payment**

76. Pursuant to Sections 113(d)(2)(B) and (e) of the CAA, 42 U.S.C. §§ 7413(d)(2)(B) and (e), and taking into account the relevant statutory penalty criteria, the SEP, Respondent's finances, the facts alleged in the Complaint, and any such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of \$5,000 for the violations alleged in this matter.

77. Respondent agrees to pay a civil penalty in the amount of \$5,000 in the manner described below:

a. Payment shall be in a single payment of \$5,000, due no later than 45 calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date postmarked or remitted by wire transfer. Payment must be received by 3:00 p.m. Eastern Standard Time to be considered as received that day.

b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall designate the name and docket number of this case, be in the amount stated in part “a,” above, and be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

**If remitted by regular U.S. mail:**

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

**If remitted by any overnight commercial carrier:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

**If remitted by wire transfer:** Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727  
Environmental Protection Agency”.

c. At the time of payment, a copy of the check (or notification of other type of payment), with the name and docket number of this case, shall also be sent to:

Wanda Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
Mail Code ORA18-1  
5 Post Office Square, Suite 100



Boston, MA 02109-3912

and to:

Steven Schlang, Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
Mail Code OES04-4  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

78. **Collection of Unpaid Civil Penalty:** Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay any of the CAA penalty amount described in Paragraph 76, plus interest thereon, it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the penalty if it is not paid by the due dates established herein. In that event, interest will accrue from the effective date of the CAFO, at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2). In the event that the penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorneys’ fees and collection costs. A quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

79. The provisions of this CAFO shall be binding upon Respondent and Respondent’s officers, directors, agents, servants, employees, and successors or assigns.

80. Respondent shall bear its own costs and attorneys’ fees in this proceeding and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

81. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113 of the CAA for the violations specifically alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other 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. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

82. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the allegations in this CAFO are based, or for Respondent's violation of any other applicable provision of federal, state or local law.

83. The terms, conditions, and requirements of this CAFO may not be modified without the written agreement of both parties and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements between the parties modifying the SEP schedules described in paragraph 60(i) and Appendix B.

84. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

85. In accordance with 40 C.F.R. § 22.31(b), the effective date is the date on which this CAFO is filed with the Regional Hearing Clerk.

86. Notice of filing shall be provided to the Respondent at the addresses listed below:

Mayor William A. Flanagan  
City of Fall River

One Government Center  
Fall River, Massachusetts 02722

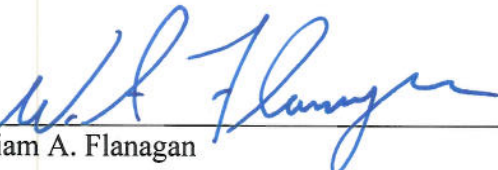
With a copy to:

Terrance J. Sullivan  
Director of Community Utilities  
City of Fall River  
One Government Center  
Fall River, Massachusetts 02722

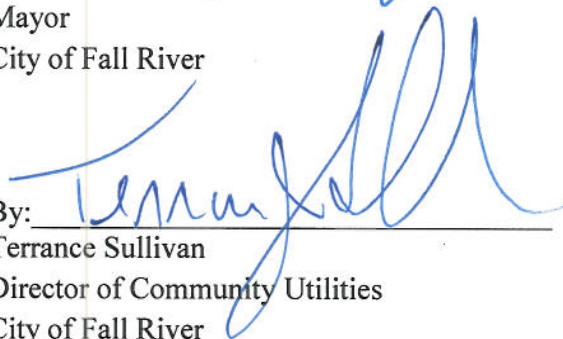
And to:

Elizabeth Sousa, Esq.  
Office of the Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, Massachusetts 02722


FOR RESPONDENT, CITY OF FALL RIVER

By:   
William A. Flanagan  
Mayor  
City of Fall River

Date: 9-26-14

By:   
Terrance Sullivan  
Director of Community Utilities  
City of Fall River

Date: 9/26/14

By:   
Elizabeth Sousa  
Corporation Counsel  
City of Fall River

Date: 9/26/14

FOR COMPLAINANT, United States Environmental Protection Agency:

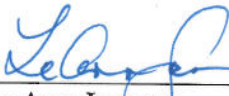
By: Susan Studlien  
Susan Studlien  
Director  
Office of Environmental Stewardship  
EPA, Region 1

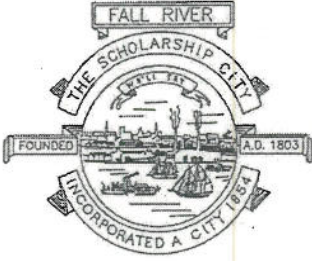
Date: 09/29/14

V. **FINAL ORDER**

The foregoing Consent Agreement is hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will be effective on the date it is filed with the Regional Hearing Clerk.

Date: September 29, 2014

  
\_\_\_\_\_  
LeAnn Jensen  
Acting Regional Judicial Officer  
U.S. EPA, Region 1



**City of Fall River**  
**Massachusetts**  
 Department of Community Utilities  
 WATER • SEWER

**WILLIAM A. FLANAGAN**  
*Mayor*

**TERRANCE SULLIVAN**  
 Administrator

September 8, 2014

*Via email only schlang.steven@epa.gov*

Steven Schlang, Esq.  
 Senior Enforcement Counsel, OES04-3  
 U.S. EPA, Region 1  
 5 Post Office Square, Suite 100  
 Boston, MA 02109-3912

**Re: *In the Matter of the City of Fall River, MA***  
***Docket No. CAA-01-2014-0021***  
***Supplemental Environmental Project***  
***Scope of Work - Fall River Water Treatment Facility***

Dear Attorney Schlang:

The City of Fall River (City) assisted by its engineering consultant Fay, Spofford and Thorndike (FST) has prepared this letter to document the proposed Scope of Work (SOW) for the Supplemental Environmental Project (SEP) currently being negotiated as part of the Consent Agreement and Final Order (CAFO) in response to the above referenced complaint. The above-referenced complaint was issued pursuant to Section 112(r)(7) of the Clean Air Act (CAA), specifically the Risk Management Plan elements in Title 40 Code of Federal Regulations (CFR) Part 68. The City is subject to the RMP elements because it uses and stores up to 14,000 pounds of chlorine at its water treatment facility (WTF) for the disinfection of drinking water. The threshold limit for chlorine is 2,500 pounds.

As part of the proposed settlement and CAFO, the City is proposing to convert the disinfection process at the WTF from the storage and use of chlorine gas to the storage and use of sodium hypochlorite. This conversion will result in the elimination of chlorine gas at the facility. The use of sodium hypochlorite for the disinfection of drinking water is common in the drinking water industry. Many public water suppliers have made the switch from chlorine gas to sodium hypochlorite.

The SOW, as proposed, has been developed to meet the requirements of a SEP as outlined in the *EPA Supplemental Environmental Projects Policy*, dated May 1, 1998 and the design standards outlined in the Massachusetts Department of Environmental Protection's (MADEP) *Guidelines*

*for Public Water Systems, dated April 2014 (Guidelines).* If this SOW is approved as a SEP, the City will design the proposed modifications and prepare project documents for review and approval by MADEP and then issue them for public bidding under Massachusetts General Law Chapter 146. It should be noted that the proposed conversion to sodium hypochlorite at the City's WTF will reduce the overall risk to operator safety and public health and the environment by eliminating the storage of the toxic regulated substance.

The proposed SOW includes the demolition and removal of the existing chlorine gas feed system, chain hoist and cylinder storage cradles, the installation of new sodium hypochlorite bulk storage tanks, day tanks, chemical transfer pumps, chemical metering pumps and the associated discharge piping, and instrumentation and controls. Modifications to the facility including HVAC and building/architectural modifications to support the installation of the new tanks, equipment and appurtenances are also proposed. The preliminary design of the proposed modifications are based on past WTF chlorine usage data, FST experience in design of similar sodium hypochlorite feed systems at other water treatment facilities, and the requirements of the MADEP Guidelines. A preliminary demolition plan, equipment layout, and chemical feed schematic for the proposed sodium hypochlorite feed system are attached to this letter. Major components of the proposed system include:

- (3) - 3,000 gallon vertical high density polyethylene bulk storage tanks to provide 30 days storage at the anticipated average daily chemical usage rate per MADEP Guidelines.
- (2) - 325 gallon chemical high density polyethylene day tank to provide 30 to 60 hours storage at the anticipated average daily chemical usage rate per MADEP Guidelines.
- (2) - Chemical Transfer Pumps with manual control and automatic high level shut-off, and incorporated into the WTF SCADA system.
- (3) - Chemical Metering Pumps to be incorporated into the Plant SCADA system for automatic flow pacing meeting all the requirements of the MADEP Chapter 6 Guidelines.
- Chemical piping to the existing points of chemical addition.
- Construction of chemical containment structure.
- Construction and operation of a temporary sodium hypochlorite feed system during construction.

All sodium hypochlorite solutions contain perchlorate as a result of the manufacturing process and chemical degradation of the hypochlorite ion. To minimize perchlorate in the hypochlorite purchased and stored at the WTP, the City will only purchase products that meet the requirements of AWWA Standard B-300 and NSF Standard 60 for drinking water additives. To further minimize hypochlorite decomposition our proposed SOW includes the minimum bulk storage quantities to meet the MADEP guidelines (30 days), storage tanks to minimize UV impacts, and ventilation improvements to keep the storage area cool.

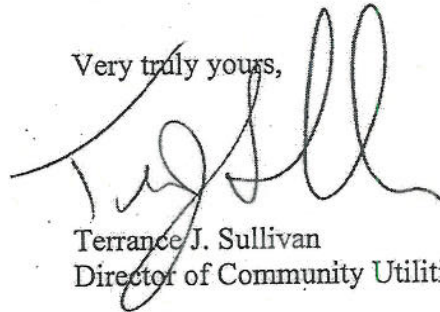
The following table presents the Opinion of Probable cost for the conversion from chlorine gas to sodium hypochlorite at the WTF.

*City of Fall River*  
*SEP Estimated Project Costs*

Temporary Chemical Feed System	\$ 20,000
Equipment Demolition	\$ 40,000
Process Tanks and Pumps	\$ 90,000
Chemical Piping, Valves and Appurtenances	\$ 50,000
Electrical and Instrumentation	\$ 47,500
Facility Modifications	\$ 37,500
<b>Sub-Total</b>	<b>\$ 285,000</b>
Contractor Bonds, Insurance, O&P	\$ 64,000
Engineering and Contingencies	\$ 100,000
<b>Total Project Cost</b>	<b>\$ 449,000</b>

The City of Fall River appreciates the opportunity to present this proposed Scope of Work for a SEP at the City's water treatment facility and looks forward to your favorable review. If you have any questions or require any additional information, please do not hesitate to contact me at 508-324-2321.

Very truly yours,



Terrance J. Sullivan  
Director of Community Utilities

Attachments (3)

cc: Christy DiOrio, Esq.  
Jim Gaffey, EPA  
Karen McGuire, EPA  
(all via email w/ attachments)



EPA SEP

Fall River Water Division

Sodium Hypochlorite Disinfection Conversion

Schedule of Deliverables

- June 30, 2015            Loan Order Authorization.
- December 15, 2015    50% Construction Documents.
- February 1, 2016        100% Construction Documents.
- March 15, 2016         Construction Bids received.
- April 1, 2016            Construction Contract Executed.
- December 31, 2016     Substantial Completion of Construction; System Operational.
- February 28, 2017      Construction completion; Project closeout; Retainage Release.
- March 28, 2017         SEP report submittal to EPA.

In the Matter of: The City of Fall River, Massachusetts  
Docket No. CAA-01-2014-0021

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing Consent Agreement and Final Order to be sent to the following person(s), in the manner stated, on the date below:

Original and one copy,  
By Hand Delivery:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

One copy, By Certified Mail,  
Return Receipt Requested:

Christy DiOrio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722

Dated: 9/30/14

  
\_\_\_\_\_  
Steven Schlang  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: OES04-4  
Boston, MA 02109-3912

In the Matter of: The City of Fall River, Massachusetts  
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