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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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1201 Elm Street, Suite 500
Dallas, Texas 75270

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

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Hartree Channelview LLC,

§

Docket No. CAA-06-2023-3333

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Respondent.

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CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Hartree Channelview LLC (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, which involved a longer period of violation, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in

40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Hartree Channelview LLC, a limited liability company formed in the state of Delaware and conducting business in the state of Texas.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires 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. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires the Administrator to establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective

threshold quantities is codified at 40 C.F.R. § 68.130.

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. 1910.119.

11. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$55,808 for violations that occur after November 2, 2015, and are assessed after January 6, 2023.

Definitions

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

13. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

14. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3 defines “stationary source,” in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may

occur.

15. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

16. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

17. The regulation at 40 C.F.R. § 68.3 defines “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 the 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.

18. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

EPA Findings of Fact and Conclusions of Law

19. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

20. Respondent is the owner of a facility located at: 16518 De Zavalla Road, Channelview, Texas 77530 (the “Facility”).

21. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted an inspection of the Facility between April 5-7, 2022, to determine Respondent’s compliance with

Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the “Inspection”).

22. On December 7, 2022, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter. On March 29, 2023, the EPA responded to the documentation and information received from Respondent as a result of the opportunity to confer and articulated the EPA’s position concerning Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

23. The Facility is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

24. Respondent has a crude oil splitter process at the Facility, meeting the definition of “process”, as defined by 40 C.F.R. § 68.3.

25. Flammable mixtures (propane and butane) are a “regulated substance” pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for flammable mixtures (“the Regulated Substance”), as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

26. Respondent has greater than a threshold quantity of the Regulated Substance, in a process at the Facility, meeting the definition of “covered process” as defined by 40 C.F.R. § 68.3.

27. From the time Respondent first had on-site greater than a threshold quantity of the Regulated Substance in a process, Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

28. From the time Respondent first had on-site greater than a threshold quantity of the

Regulated Substance in a process, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements because, pursuant to 40 C.F.R. § 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 or Program 2, is subject to Occupational Safety and Health Administration requirements for Process Safety Management pursuant to 29 C.F.R. 1910.119, and is in North American Industry Classification System code 32411.

EPA Findings of Violation

29. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

30. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1 – Process Hazard Analysis

31. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.67(e), the owner or operator shall establish a system to promptly address the process hazard analyses team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

32. Respondent failed to maintain documentation of the estimated completion dates for the corrective actions that were completed for the 2018 or 2021 CDU PHA recommendations.

33. Respondent's failure to maintain documentation of the estimated completion dates for the 2018 or 2021 CDU PHA recommendations pursuant to 40 C.F.R. § 68.67(e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2 – Operating Procedures

34. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.69(c), the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

35. Respondent failed to provide operating procedure annual certifications for 2019 and 2020.

36. Respondent's failure to provide operating procedure annual certifications for 2019 and 2020 pursuant to 40 C.F.R. § 68.69(c), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3 – Training

37. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.71(c), the owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the

employee understood the training.

38. Respondent failed to provide training documentation that demonstrated that each employee involved in operating the covered process had received and understood the training.

39. Respondent's failure to prepare a record which contains the means used to verify that the employee understood the training pursuant to 40 C.F.R. § 68.71(c), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4 – Mechanical Integrity & Compliance Audit

40. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.73(b), the owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment. Pursuant to 40 C.F.R. §§ 68.73(d)(1)-(2), inspections and tests shall be performed on process equipment, and inspection and testing procedures shall follow recognized and generally accepted good engineering practices. Additionally, pursuant to 40 C.F.R. § 68.79(d), the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

41. Respondent failed to document in its procedures the recognized and generally accepted good engineering practices (RAGAGEP) that would be used to implement a comprehensive mechanical integrity (MI) program. For example, an American Petroleum Institute (API) standard was mentioned, but the MI procedure did not document the areas where the standard was implemented for equipment used in the Facility. Respondent also failed to provide records of MI inspections on rotating equipment at the time of the Inspection. Respondent has not yet implemented a plan to incorporate certain types of pumps into the RMP

MI program. At the time of the Inspection, Respondent had not completed base line ultrasonic thickness measurement evaluations on pressure vessels and piping per the API standards, RAGAGEP, and the facility's maintenance program. The thickness testing was completed in April 2023. Additionally, Respondent failed to promptly determine and document an appropriate response to one of the findings of the 2021 compliance audit regarding base line ultrasonic thickness measurement evaluations and has not documented that the deficiencies have been corrected.

42. Respondent's failure to establish and implement written procedures to maintain the on-going integrity of process equipment pursuant to 40 C.F.R. § 68.73(b), Respondent's failure to perform inspections and tests on process equipment and to follow recognized and generally accepted good engineering practices pursuant to 40 C.F.R. §§ 68.73(d)(1)-(2), and Respondent's failure to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected, pursuant to 40 C.F.R. § 68.79(d), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5 – Management of Change

43. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.75(c), employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

44. Respondent failed to document that employees involved in operating a process and

maintenance and contract employees whose job tasks will be affected by a change in the process were informed of, and trained in, the change prior to start-up of the process or affected part of the process for the revamp project.

45. Respondent's failure to inform and train employees involved in operating a process, and maintenance and contract employees whose job tasks will be affected by a change in the process, the change prior to start-up of the process or affected part of the process pursuant to 40 C.F.R. § 68.75(c), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 6 – Compliance Audit

46. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.79(a), the owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

47. Respondent failed to evaluate compliance at least every three years. Commissioning of the Crude Distillation Unit occurred on September 5, 2018, under the previous owner; therefore, the next compliance audit was due within three years, by September 5, 2021. The audit was not conducted until October 12-13, 2021.

48. Respondent's failure to certify that it has evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed pursuant to 40 C.F.R. § 68.79(a), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 7 – Hot Work

49. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.85(b), the permit shall document that the fire prevention and protection requirements in 29 C.F.R. 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations.

50. Respondent failed to ensure a fire watch was included per OSHA 1910.252(a)(2)(iii)(B) and this subsection of Part 68 for JSA/ Permit to Work #103424.

51. Respondent's failure document that the fire prevention and protection requirements in 29 C.F.R. 1910.252(a) were implemented prior to beginning the hot work operations pursuant to 40 C.F.R. § 68.85(b), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

52. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the performance of the Supplemental Environmental Project (SEP) set forth herein;
- e. consents to the issuance of any specified compliance or corrective action

order;

- f. consents to any conditions specified herein;
- g. consents to any stated Permit Action;
- h. waives any right to contest the allegations set forth herein; and
- i. waives its rights to appeal the Final Order accompanying this Consent Agreement.

53. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

54. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

55. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of twenty-eight thousand and sixty-four dollars (\$28,064), as set forth below.

56. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

57. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lorena S. Vaughn
Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov; and

Carlos Flores
Enforcement and Compliance Assurance Division
Air Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
flores.carlos@epa.gov

58. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Supplemental Environmental Project

59. In response to the alleged violations of 112(r) of the CAA, 42 U.S.C. § 7412(r), and in settlement of this matter, although not required by 112(r) of the CAA, 42 U.S.C. § 7412(r), or any other federal, state, or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described below and in Appendix A.

60. Respondent shall complete a project to secure significant environmental and public health protection benefits, consisting of equipment purchases and donations to the Channelview

Fire Department. The SEP is more specifically described in Appendix A, which is incorporated herein by reference and is enforceable by this Consent Agreement and Final Order.

61. Respondent shall satisfactorily complete the SEP according to the requirements and schedule set forth in Appendix A. Respondents shall spend no less than \$102,919 on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent's implementation of the SEP as described in Appendix A does not expend the full amount set forth in Appendix A, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondent will identify, purchase, and donate additional emergency response equipment to the Channelview Fire Department.

62. Respondent shall complete the SEPs within 12 months of the effective date of this Consent Agreement and Final Order.

63. Use of SEP Implementer and Identification of SEP Recipient

a. SEP Implementer

i. Respondents will not use a contractor/consultant to implement the SEP.

b. SEP Recipient

i. Respondents have selected the Channelview Fire Department to receive emergency response equipment.

c. The EPA had no role in the selection of any SEP implementer, SEP recipient, or specific equipment identified in the SEP, nor shall this Consent Agreement and Final Order be construed to constitute EPA approval or endorsement of any SEP implementer, SEP recipient, or specific equipment identified in this Consent Agreement and Final Order.

64. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's *2015 Update to the 1998 Supplemental Environmental Projects Policy*, (March 10, 2015). The SEP advances at least one of the objectives of 112(r) of the CAA, 42 U.S.C. § 7412(r), by equipping emergency responders with additional equipment to mitigate the effects of accidental releases on humans and the environment. The SEP is not inconsistent with any provision of 112(r) of the CAA, 42 U.S.C. § 7412(r). The SEP relates to the alleged violation(s), and is designed to reduce:

- a. The overall risk to public health and/or the environment potentially affected by the alleged violations by enhancing the Channelview Fire Department's ability to respond to accidental releases through the acquisition of additional and specialized emergency response equipment.

65. Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is \$102,919;
- b. That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That 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 Consent Agreement and Final Order;
- d. That Respondent has not received and will not have received credit for the SEP in

- any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
 - g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 60.
 - h. That Respondent has inquired of the SEP recipient whether it is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Recipient that it is not a party to such a transaction.

66. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws."

SEP Completion Report

67. Respondent shall submit a SEP Completion Report to EPA within 180 days of completion of the SEP. The SEP (Completion) Report shall contain the following information, with supporting documentation:

- a. A detailed description of the SEP as implemented;
- b. A description of any operating or logistical problems encountered and the solutions thereto;
- c. Itemized costs;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

68. Respondent agrees that failure to submit the SEP Completion Report required by Paragraphs 67 above shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties pursuant to Paragraphs 74-77 below.

69. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order to Carlos Flores at *flores.carlos@epa.gov*.

70. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

71. The Respondent shall submit the following certification in the SEP Completion

Report, signed by a responsible corporate official:

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.

72. After receipt of the SEP Completion Report described in Paragraphs 67-71 above,

EPA will notify the Respondent, in writing, regarding:

- a. Any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
- b. Indicate that EPA concludes that the project has been completed satisfactorily; or
- c. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with the stipulated penalties section herein.

73. If EPA elects to exercise option (72.a) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, 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 upon Respondent. Respondent agree to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO.

Stipulated Penalties

74. Except as provided in Paragraphs 75 and 76 below, if Respondent fails to

satisfactorily complete the requirements regarding the SEP specified in Paragraph 60 above by the deadline in Paragraph 62 Respondent agrees to pay, in addition to the civil penalty in Paragraph 55, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:

- a. \$250 per day for days 1-30;
- b. \$300 per day for days 31-60;
- c. \$350 per day for 60 or more days.

75. If Respondent fails to timely submit any SEP reports, such as those referred to in the SEP Completion Report Section, in accordance with the timelines set forth in this Consent Agreement and Final Order, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:

- a. \$100 per day for days 1-30;
- b. \$150 per day for days 31-60;
- c. \$200 per day for 60 or more days.

76. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 61 above, Respondent shall pay a stipulated penalty to the United States in the amount of \$113,211. "Satisfactory completion" of the SEP is defined as Respondent spending no less than \$102,919 to purchase and donate emergency response equipment to the Channelview Fire Department on the project timeline set forth in Appendix A. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

77. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.

78. 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 Paragraphs 56 and 57 above. Interest and late charges shall be paid as stated in Paragraph 58.

Modification

79. The terms, conditions, and compliance requirements of this Consent Agreement and Final Order may not be modified or amended except upon the written agreement of all parties and approval of the Regional Judicial Officer. However, the Regional Judicial Officer need not approve written agreements between the parties modifying the specified emergency response equipment in Appendix A and written agreements between the parties modifying for good cause the SEP schedules in Appendix A. The Branch Manager of the Air Enforcement Branch of the Enforcement and Compliance Assurance Division shall sign the written agreements that do not require Regional Judicial Officer approval and said written agreements shall be filed with the Regional Hearing Clerk.

Effect of Settlement and Reservation of Rights

80. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

81. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

82. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), save and

except as reflected in the Administrative Order for Compliance on Consent, Docket No. CAA-06-2023-3334. Fulfillment of the terms of the Administrative Order for Compliance on Consent is intended to bring Respondent into full compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

83. Full payment of the penalty proposed in this Consent Agreement 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 law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

84. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

85. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

86. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

87. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

88. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

89. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: *george.elizabeth.a@epa.gov*

To Respondent: *gwilkinson@velaw.com*

RESPONDENT:
HARTREE CHANNELVIEW LLC

Date: _____

Andreina Solorzano

Andreina Solorzano
Chief Commercial Officer

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: May 18, 2023

Cheryl T. Seager

Digitally signed by CHERYL
SEAGER
Date: 2023.05.18 14:13:03 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

**THOMAS
RUCKI**

Digitally signed by THOMAS RUCKI
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=THOMAS RUCKI,
0.9.2342.19200300.100.1.1=680010036
55804
Date: 2023.05.18 17:00:04 -0400

Thomas Rucki
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

george.elizabeth.a@epa.gov

Copy via Email to Respondent:

gwilkinson@velaw.com

Copy via Email to Regional Hearing Clerk:

vaughn.lorena@epa.gov

ELIZABET Digitally signed by
H GEORGE ELIZABETH GEORGE
Date: 2023.05.18
16:26:57 -05'00'

Signed
Office of Regional Counsel
U.S. EPA, Region 6

APPENDIX A

CONSENT AGREEMENT AND FINAL ORDER

EPA Docket No. CAA-06-2023-3333

Respondent: Hartree Channelview LLC

**SUPPLEMENTAL ENVIRONMENTAL PROJECT
("SEP")**

SEP Description

Hartree Channelview LLC (“HC”) has partnered with the Channelview Fire Department (“CFD”) to identify equipment needs that will expand the Department’s ability to safely and efficiently perform emergency response operations. The CFD has two stations and provides fire suppression, emergency medical care, rescue, hazardous materials mitigation, disaster response, and public education focused within Harris County Emergency Services District 50, which includes residential, commercial, and industrial properties near the Houston Ship Channel. HC will complete the SEP by directly purchasing equipment for the CFD that will improve its ability to respond to emergencies and protect the public. These purchases will assist the CFD in fulfilling its mission.

SEP

CFD and HC have identified specific equipment that will enhance CFD’s ability to perform emergency response operations. The equipment can be grouped into three different primary purposes: i) improve CFD’s ability to safely respond to emergencies, ii) improve CFD’s ability to perform lifesaving operations, and iii) expand CFD’s firefighting capabilities for complex emergency response situations. This equipment will directly improve the CFD’s ability to save lives. Descriptions of the various groups of equipment are included in the table below:

Purpose	Description	Projected Community Benefit	Total Cost for Equipment
(i) Improve CFD’s Ability to Safely Respond to Emergencies	Strut Kit and Accessories	This equipment will provide the CFD with the capability of stabilizing and lifting heavy vehicles and equipment for response and rescue operations. This will both enhance the CFD’s ability to respond to emergencies as well as improve the safety of their response.	\$31,905
	Airbag Kit	This equipment is used to stabilize or lift equipment or vehicles during rescue operations. The equipment will improve the CFD’s ability to safely respond to emergencies and provide rescue services.	\$6,144
(ii) Improve CFD’s Ability to Perform Lifesaving Operations	Rope Rescue Tools	This equipment, which includes tripods, hoists, ropes, and associated accessories, will provide the CFD with the equipment needed to perform complex rope rescues in confined spaces.	\$14,893
	Extrication Tools	These devices, including a battery powered spreader, c-cutter, and telescoping ram, will improve the CFD’s ability to rescue people entrapped in equipment or vehicles.	\$30,640

(iii) Expand CFD's Firefighting Capabilities	Additional Pumping and Firefighting Equipment	This equipment will expand the CFD's capabilities by providing additional tools to handle complex emergency response situations, including additional pump connections, hoses, nozzles, and other response equipment.	\$19,337
Total Cost:			\$ 102,919

The total cost of the equipment to be purchased under this SEP is \$102,919.

The HC refinery is a facility subject to Program 3 of the RMP regulations and, as such, is required to comply with the chemical accident prevention requirements of 40 CFR 68. The subject alleged violations are related to the facility's compliance with 40 CFR 68, which includes obligations for emergency preparedness pursuant to 40 CFR Part 68 Subpart E; therefore, this SEP is closely related to the underlying alleged violations. Given the purposes of the SEP as described herein, it is our belief that the SEP is designed to reduce the adverse impact to public health and the environment to which the alleged violations contribute. The Director of HSE for the HC refinery contacted the CFD and confirmed that it has not received state or federal funds that could be used to purchase the equipment proposed for inclusion in the SEP, above. As a result of that inquiry, HC hereby certifies that:

1. It is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described above;
2. It has inquired of the Channelview Fire Department, the SEP recipient, whether it is a party to an open federal financial assistance transition that is funding or could fund the same activity as outlined in the SEP, above, and has been informed by the Channelview Fire Department that it is not a party to such a transaction.

PROJECT TIMELINE AND MAJOR MILESTONES

DATE	CAFO/SEP approved and signed by HC and EPA
DATE + 1 MONTH	HC will directly order equipment for the CFD
DATE + 12 MONTHS	Equipment delivered to the CFD. Equipment may be delivered on a rolling basis through the 12 months.