

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2023-0007</b>
	)	
<b>Indiana-American Water Company Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Ogden Dunes Facility</b>	)	<b>Under Section 113(d) of the Clean Air Act,</b>
<b>Portage, Indiana</b>	)	<b>42 U.S.C. § 7413(d)</b>
	)	
<b>Respondent.</b>	)	
<hr/>	)	

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Indiana-American Water Company Inc. (IN-AWC), a corporation doing business in Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

10. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

**Statutory and Regulatory Background**

**Clean Air Act, Subsection 112(r)**

12. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the

accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

13. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 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.

14. Section 112(r)(7)(A) of the CAA, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

15. Section 112(r)(7)(B)(i) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

16. Section 112(r)(7)(B)(ii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

17. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which is codified, as amended, at 40 C.F.R. § 68.130.

**40 C.F.R. Part 68: Chemical Accident Prevention Provisions**

18. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which is codified at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (CAPP or Part 68). *See* 84 Fed. Reg. 69834 (Dec. 19, 2019).<sup>1</sup>

19. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the CAA, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

A. Applicability

20. Section 68.10(a) of CAPP provides, in pertinent part, that the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115, shall comply with the requirements of CAPP no later than the date on which a regulated substance is first present above a threshold quantity in a process.

21. Section 68.3 of CAPP provides that “regulated substance” means any substance listed pursuant to Section 112(r)(3) of the CAA at 40 C.F.R. § 68.130.

---

<sup>1</sup> *See also* 87 Fed. Reg. 53556 (Aug. 31, 2022) (currently proposed amendment).

22. Table 1 at Section 68.130(a) of CAPP lists chlorine as a regulated toxic substance with a threshold quantity of 2,500 pounds.

23. Section 68.3 of CAPP provides that “process” means “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” For purposes of this definition, a single process includes “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 . . .” A “covered process” means “a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.”

24. Section 68.10(i) of CAPP provides, in pertinent part, that a covered process is subject to Program 3 requirements if the process does not meet the requirements of 40 C.F.R. § 68.10(g) and if either of the following conditions is met: the process is in North American Industry Code System code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 CFR § 1910.119.

25. Section 68.12(a) and (d) of CAPP identify CAPP requirements that the owner or operator of a stationary source with a process subject to Program 3 shall meet, which include, among other provisions, requirements regarding hazard assessment (CAPP, Subpart B), the Program 3 prevention program (CAPP, Subpart D), emergency response (CAPP, Subpart E), and the submittal of an updated RMP (CAPP, Subpart G).

#### B. Process Safety Information

26. Section 68.65 of CAPP provides, in pertinent part, that before conducting any process hazard analysis required by CAPP, the owner or operator of a stationary source with a process subject to Program 3 shall complete a compilation of written process safety information

pertaining to the hazards of the regulated substances used or produced by the process, the technology of the process, and the equipment in the process, including at least the following:

- a. Section 68.65(c)(1) of CAPP:
  - i. An evaluation of the consequences of deviations (Section 68.65(c)(1)(v)).
- b. Section 68.65(d)(1) of CAPP:
  - i. Relief system design and design basis (Section 68.65(d)(1)(iv));
  - ii. Ventilation system design (Section 68.65(d)(1)(v));
  - iii. Design codes and standards employed (Section 68.65(d)(1)(vi));
  - iv. Material and energy balances for processes built after June 21, 1999 (Section 68.65(d)(1)(vii)); and
  - v. Safety systems (e.g. interlocks, detection or suppression systems) (Section 68.65(d)(1)(viii)).

27. Section 68.65(d)(2) of CAPP provides that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

#### C. Process Hazard Analysis

28. Section 68.67 of CAPP provides, in pertinent part, that the owner or operator of a stationary source with a process subject to Program 3 shall:

- a. Address, in the process hazard analysis, stationary source siting; human factors; and a qualitative evaluation of a range of the possible safety and health effects of failure of controls (Section 68.67(c)(5)-(7));
- b. Have the process hazard analysis be performed by a team with expertise in engineering and process operations, that includes at least one employee who has experience and knowledge specific to the process being evaluated, and one

knowledgeable in the specific process hazard analysis methodology being used (Section 68.67(d));

- c. Establish a system to promptly address the 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 (Section 68.67(e));
- d. At least every five (5) years after the completion of the initial process hazard analysis, have the process hazard analysis be updated and revalidated by a team meeting the requirements in 40 C.F.R. § 68.67(d), to assure that the process hazard analysis is consistent with the current process (Section 68.67(f)); and
- e. Retain process hazards analyses and updates or revalidations for each process subject to Program 3, as well as the documented resolution of recommendations described in 40 C.F.R. § 68.67(e) for the life of the process. (Section 68.67(g))

#### D. Operating Procedures

29. Section 68.69(a) of CAPP provides, in pertinent part, that the owner or operator of a stationary source with a process subject to Program 3 shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with process safety information and that address the elements in 40 C.F.R. §§ 68.69(a)(2)(ii) and 68.69(a)(3)(ii)-(v), among other provisions.

30. Section 68.69(b) of CAPP provides that the operating procedures shall be readily accessible to employees who work or maintain a process.

E. Training

31. Section 68.71(a)(1) of CAPP provides that each employee involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in 40 C.F.R. § 68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

32. Section 68.71(c) of CAPP provides that the owner or operator shall ascertain, verify, and record that each employee involved in operating a process has received and understood the training required by Section 68.71 of CAPP.

F. Mechanical Integrity

33. Section 68.73(b) of CAPP provides that the owner or operator of a stationary source with a process subject to Program 3 shall establish and implement written procedures to maintain the ongoing integrity of process equipment, as identified at 40 C.F.R. § 68.73(a).

34. Section 68.73(c) of CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

G. Compliance Audits

35. Section 68.79(a) of CAPP provides that the owner or operator of a stationary source with a process subject to Program 3 shall certify that they have evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart D, Program 3 Prevention Program, at least every



three years to verify that procedures and practices developed under Subpart D, referenced above, are adequate and are being followed.

36. Section 68.79(b) of CAPP provides that the compliance audit shall be conducted by at least one person knowledgeable in the process.

37. Section 68.79(d) of CAPP provides that 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.

#### H. Employee Participation

38. Section 68.83(b) of CAPP provides that the owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management required by CAPP.

39. Section 68.83(c) of CAPP provides that the owner or operator shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under CAPP.

#### I. Emergency Response

40. Section 68.90(b)(1) and (4) provide, in pertinent part, that the owner or operator of a non-responding stationary source, whose employees will not respond to accidental releases of regulated substances, need not comply with 68.95 of the CAPP, provided a stationary source with a toxic substance held in process above a threshold quantity is included in the community emergency response plan developed under 42 U.S.C. § 11003 and the owner or operator performs the annual emergency response coordination activities required under 40 C.F.R. § 68.93.

41. Section 68.93(a) of CAPP provides, in pertinent part, that the owner or operator shall coordinate response needs with local emergency planning and response organizations at

least annually, and more frequently, if necessary, to address changes: at the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan.

42. Section 68.93(c) of CAPP provides, in pertinent part, that the owner or operator shall document coordination with local authorities, including: the names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities.

### **Factual Allegations and Alleged Violations**

#### **A. Applicability**

43. IN-AWC treats and chlorinates water at the Ogden Dunes Water Treatment Plant it owns and operates at 84 Diana Road, Portage, Indiana (the Facility).

44. The Facility maintains a maximum inventory of 36,000 pounds of the regulated toxic substance chlorine as liquified compressed gas, as determined under 40 C.F.R. § 68.115, which exceeds the threshold quantity of 2,500 pounds of chlorine as set forth at Table 1 to 40 C.F.R. § 68.130.

45. The Facility's covered process consists of the usage, storage, handling, and movement of chlorine from the cylinders, through the chlorine pipes, to the injectors.

46. The Facility's worst-case release assessment conducted under Subpart B of Part 68 and 40 C.F.R. § 68.25 determined that the distance to the toxic endpoint for chlorine (0.0087 mg/L, as listed in Appendix A of Part 68) is greater than the distance to any public receptor. The Facility therefore does not meet the eligibility requirements of 40 C.F.R. § 68.10(g) for Program 1.

47. The Facility's covered process is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

48. The Facility has a covered process that is subject to requirements of Chemical Accident Prevention Provisions in accordance with 40 C.F.R. § 68.10(a) and the requirements of Program 3 in accordance with 40 C.F.R. § 68.10(i).

49. On December 6 and 7, 2021, EPA conducted an announced inspection of the Facility.

50. IN-AWC provided numerous documents for the December 6 and 7, 2021 inspection. These documents were related to various aspects of its Program 3 requirements under CAPP including: Program 3 prevention program and emergency response.

#### B. Process Safety Information

51. Based on documentation provided to EPA inspectors, IN-AWC did not complete a compilation of written process safety information pertaining to the technology of the process and the equipment in the process that includes: [1] an evaluation of the consequences of deviations; [2] relief system design and design basis; [3] ventilation system design; [4] design codes and standards employed; [5] material and energy balances for processes build after June 21, 1999; and [6] safety systems (e.g., interlocks, detection or suppression systems). This is in violation of 40 C.F.R. §§ 68.65(c)(1)(v) and 68.65(d)(1)(iv)-(viii).

52. Under 40 C.F.R. § 68.65(d)(2), "[t]he owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices." Under recognized and generally accepted good engineering practices, pipes containing chlorine should be labeled. During the December 6 and 7, 2021 inspection, EPA inspectors observed that IN-AWC had not labeled the contents and flow direction in the chlorine pipes in the chlorinator

room. By failing to adequately label the pipes, IN-AWC is in violation of 40 C.F.R. § 68.65(d)(2).

C. Process Hazard Analysis

53. The Facility's September 10, 2020 process hazard analysis (PHA) failed to include: [1] factors listed in 40 C.F.R. §§ 68.67(c)(5)-(7), [2] the involvement of a team with the appropriate technical background; and [3] a system to address, document, and communicate the timely resolution of the team's findings and recommendations. These are violations of 40 C.F.R. §§ 68.67(c)(5)-(7), (d), and (e).

54. IN-AWC provided to EPA inspectors the two most recent PHAs, dated July 2, 2013, and September 10, 2020. IN-AWC failed to update and revalidate the PHA at least every five years by a team meeting the requirements of 40 C.F.R. § 68.67(d) to assure that the PHA is consistent with the current process. This was in violation of 40 C.F.R. § 68.67(f).

55. IN-AWC did not provide documentation of the initial PHA to EPA Inspectors. IN-AWC failed to retain PHAs and updates or revalidations, as well as the documented resolution of recommendations described in 40 C.F.R. § 68.67(e) for the life of the process. This was in violation of 40 C.F.R. § 68.67(g).

D. Operating Procedures

56. Based on documentation provided to EPA inspectors, IN-AWC did not develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with process safety information and that address the following elements: steps required to correct or avoid deviation; the personal protective equipment precautions necessary; control measures to be taken if physical contact or

airborne exposure occurs; control of hazardous chemical inventory levels; and any special or unique hazards. These are in violation of 40 C.F.R. § 68.69(a)(2)(ii) and (3)(ii)-(v).

57. The Facility's operating procedures were located at the Indiana American Water, Northwest, Borman Park facility in Gary, Indiana and were not readily accessible to employees who work or maintain a process at the Indiana American Water, Northwest, Odgen Dunes facility, other than "Chlorine Tank Change" operating procedures that were posted on the wall of the Chlorine Room. This is in violation of 40 C.F.R. § 68.69(b).

#### E. Training

58. IN-AWC documented the initial training of only one employee and did not provide initial training documentation for other employees. IN-AWC did not provide documentation of training of employees in an overview of the process and in the operating procedures of the process prior to each employee being involved in operating a newly assigned process, as required by 40 C.F.R. § 68.69. This was in violation of 40 C.F.R. § 68.71(a)(1).

59. IN-AWC documented for only one employee the means used to verify that the employee understood the training required by 40 C.F.R. § 68.71. IN-AWC did not record that each employee involved in operating a process had received and understood the training required by Section 68.71 of the CAPP. This was in violation of 40 C.F.R. § 68.71(c).

#### F. Mechanical Integrity

60. An IN-AWC employee maintains the on-going integrity of the process equipment of every IN-AWC facility in Indiana, and the on-site employees at the Facility rebuild the chlorine regulators. During the inspection, IN-AWC did not provide written procedures to maintain the ongoing integrity of process equipment to EPA inspectors, as identified at 40 C.F.R. § 68.73(a). This is in violation of 40 C.F.R. § 68.73(b).

61. IN-AWC verbally relayed to EPA inspectors that the IN-AWC employee, who maintains the on-going integrity of the process equipment for the Indiana facilities, trains two mechanics to rebuild the chlorine regulators. IN-AWC did not provide documents on training each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner. This was in violation of 40 C.F.R. § 68.73(c).

#### G. Compliance Audits

62. IN-AWC provided to EPA inspectors the two more recent compliance audits, dated July 7, 2017, and September 3, 2020. IN-AWC failed to certify that they had evaluated the Facility's compliance with the provisions of the Program 3 Prevention Program at least every three years to verify that procedures and practices developed under the Program 3 Prevention Program are adequate and are being followed, in violation of 40 C.F.R. § 68.79(a).

63. The Facility's September 3, 2020, compliance audit was not conducted by at least one person knowledgeable in the process. This was in violation of 40 C.F.R. § 68.79(b).

64. According to documents reviewed by EPA inspectors, IN-AWC failed to promptly determine and document an appropriate response to each of the findings of the September 3, 2020, compliance audit, and document that deficiencies have been corrected, in violation of 40 C.F.R. § 68.79(d).

#### H. Employee Participation

65. IN-AWC developed a written plan of action regarding the implementation of the employee participation required by Section 68.83 of CAPP but has not implemented the plan. IN-AWC has not consulted with employees and their representatives on the conduct and

development of process hazards analyses and on the development of the other elements of process safety management required by CAPP. This is in violation of 40 C.F.R. § 68.83(b).

66. IN-AWC did not provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under CAPP. This is in violation of 40 C.F.R. § 68.83(c).

I. Emergency Response

67. IN-AWC verbally relayed to EPA inspectors that it is not aware if the Facility is included in the community emergency response plan developed under 42 U.S.C. § 11003 and that IN-AWC has not conducted any emergency response coordination activity for the Facility. Emergency response coordination activities are required annually under 40 C.F.R. § 68.93. The Facility failed to be included in the community emergency response plan and to perform the annual emergency response coordination activities. These are in violation of 40 C.F.R. § 68.90(b)(1) and (4).

68. IN-AWC failed to coordinate response needs and to document coordination with local emergency planning and response organizations at least annually, and more frequently, if necessary, to address changes: at the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan. These are in violation of 40 C.F.R. § 68.93(a) and (c).

**Civil Penalty**

69. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$146,474.

70. Penalty Payment. Respondent agrees to:

a. pay the civil penalty of \$146,474 within 30 days after the effective date of this CAFO.

b. Pay the civil penalty using any method provided in the table below.

<b>Payment Method</b>	<b>Payment Instructions</b>
Automated Clearinghouse (ACH) payments made through the US Treasury	US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking  In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.
Wire transfers made through Fedwire	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency  In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.
Payments made through <a href="https://www.pay.gov">Pay.gov</a>  Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.	<ul style="list-style-type: none"> <li>• Go to <a href="https://www.pay.gov">Pay.gov</a> and enter “SFO 1.1” in the form search box on the top left side of the screen.</li> <li>• Open the form and follow the on-screen instructions.</li> <li>• Select your type of payment from the "Type of Payment" drop down menu.</li> <li>• Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field</li> </ul>
Cashier’s or certified check payable to “Treasurer, United States of America.” Please notate the CAFO docket number on the check.	For <b>standard delivery</b> : U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000



	<p>For <b>signed receipt confirmation</b> (FedEx, UPS, Certified Mail, etc):</p> <p>U.S. Environmental Protection Agency  Government Lockbox 979078  U.S. EPA Fines and Penalties  1005 Convention Plaza  SL-MO-C2-GL  St. Louis, Missouri 63101</p>
--	--

71. Within 24 hours of the payment of the civil penalty Respondent must send a notice of payment and states Respondent’s name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
[R5airenforcement@epa.gov](mailto:R5airenforcement@epa.gov)

Maria Gonzalez  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
[gonzalez.maria@epa.gov](mailto:gonzalez.maria@epa.gov)

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

72. This civil penalty is not deductible for federal tax purposes.

73. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

74. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney’s fees and costs

incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

### **General Provisions**

75. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [gonzalez.maria@epa.gov](mailto:gonzalez.maria@epa.gov) (for Complainant), and [fandes@btlaw.com](mailto:fandes@btlaw.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

76. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

77. The effect of the settlement described in paragraph 76, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 80 of this CAFO.

78. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

79. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 76, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

80. Respondent certifies that it is complying fully with 40 C.F.R. Part 68.

81. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

82. The terms of this CAFO bind Respondent, its successors and assigns.

83. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


84. Each party agrees to bear its own costs and attorney’s fees in this action.

85. This CAFO constitutes the entire agreement between the parties.

**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of: Indiana-American Water Company Inc.,**  
**Ogden Dunes Facility, Portage, Indiana**  
**Docket No. CAA-05-2023-0007**

**Indiana American Water Company Inc., Respondent**

7/31/2023  
Date

  
\_\_\_\_\_  
Matthew Prine, President  
Indiana-American Water Company Inc.

0001830767  
Tax Identification Number

**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of: Indiana-American Water Company Inc.,**  
**Ogden Dunes Facility, Portage, Indiana**  
**Docket No. CAA-05-2023-0007**

**United States Environmental Protection Agency, Complainant**

---

Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of: Indiana-American Water Company Inc.,**  
**Ogden Dunes Facility, Portage, Indiana**  
**Docket No. CAA-05-2023-0007**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5