

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

IN THE MATTER OF

Poole Chemical Co., Inc.

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Docket No. CAA-07-2017-0002

Respondent

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ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), electronic/facsimile filing of page 14 of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: March 13, 2017

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS

2017 MAR 13 AM 10:26

BEFORE THE ADMINISTRATOR

In the Matter of:

POOLE CHEMICAL CO., INC. ) Docket No. CAA-07-2017-0002  
                                )  
                                ) CONSENT AGREEMENT AND  
Respondent                 ) FINAL ORDER

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**CONSENT AGREEMENT/FINAL ORDER**

The United States Environmental Protection Agency, Region 7 (“EPA”), and Poole Chemical Co. Inc. (“Respondent”), have agreed to a settlement of the alleged violations set forth in this Consent Agreement/Final Order (“CA/FO”) prior to the filing of a complaint. 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 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, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This CA/FO serves as notice that 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) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this CA/FO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA’s intent to issue an order assessing penalties for these violations.

## **Parties**

3. The Complainant, by delegation from the Administrator of EPA and re-delegation from the Regional Administrator of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Poole Chemical Co. Inc., which owns and operates a facility that produces and sells various liquid and dry fertilizer products located at 200 Railroad Avenue, Holcomb, Kansas (“Respondent’s Facility”).

## **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), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

7. The regulations at 40 C.F.R. Part 68 set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan (“RMP”) that must be submitted to EPA.

8. 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 that has more than a threshold quantity of a regulated substance in a process 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.

9. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 requirements if the process does not meet the eligibility requirements of either Program 1, as described in 40 C.F.R. § 68.10(b) and it falls under a specified North American Industry Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

10. 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)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, 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 after December 6, 2013, and before November 2, 2015.

### **Definitions**

11. 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.

12. The regulations at 40 C.F.R. § 68.3 define “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.

13. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

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

15. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For 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.

### **General Factual Allegations**

16. 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).

17. Respondent’s Facility is a “stationary source” pursuant to 40 C.F.R. § 68.3.

18. On or about September 16 - 17, 2015, EPA conducted an inspection of Respondent's Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

19. Information gathered during the EPA inspection revealed that Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

20. Anhydrous ammonia is a "regulated substance" pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

21. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process

22. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to Program 3 prevention program requirements because, pursuant to 40 C.F.R. § 68.10(d), the covered process does not meet the eligibility requirements of either Program 1 and was subject to OSHA process safety management standard, 29 C.F.R. § 1910.119.

23. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12 and comply with the Program 3 requirements provided at 40 C.F.R. § 68.12(d).

### **Allegations of Violation**

24. The facts stated in Paragraphs 16 through 23 above are herein incorporated into Count 1 through Count 4 below.

25. Information collected during the inspection of Respondent's Facility revealed that Respondent failed to develop and implement a risk management program that complied with the requirements of 40 C.F.R. Part 68.

26. EPA alleges that Respondent has violated the CAA and federal regulations promulgated pursuant to the CAA as follows:

#### Count 1

27. The regulation at 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to submit a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185. Pursuant to 40 C.F.R. § 68.160, the owner or operator shall complete a single registration form that provides, *inter alia*, the Program level of each covered process and whether the stationary source is subject to 29 C.F.R. § 1910.119.

Additionally, pursuant 40 C.F.R. § 68.175(a), the owner or operator is required to provide the information identified at 40 C.F.R. § 68.175(b) through (p) for each Program 3 process.

28. The EPA's inspection revealed that Respondent timely filed an RMP that identified the storage and use of anhydrous ammonia at the Facility as a Program 2 process. Based on information gathered during the EPA's inspection, however, the EPA determined that the covered process at the Facility is subject to Program 3 requirements because the process did not meet the eligibility requirements of Program 1 and was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119. As such, Respondent failed to submit an RMP for the covered process at the Facility pursuant to the requirements at 40 C.F.R. §§ 68.150 to 68.185, as required by 40 C.F.R. § 68.12(a). Specifically:

- a. Respondent failed to complete a registration form pursuant to 40 C.F.R. § 68.160(a) that includes the information required by 40 C.F.R. § 68.160(b), including the Program level of the process and whether the stationary source is subject to 29 C.F.R. § 1910.119; and
- b. Respondent failed to provide the Program 3 prevention information identified at 40 C.F.R. § 68.175(b) through (p), as required by 40 C.F.R. § 68.175(a).

29. Respondent's failure to comply with the RMP requirement of 40 C.F.R. Part 68, as described above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Count 2

30. The regulation at 40 C.F.R. § 68.12(d)(2) requires the owner or operator to conduct a hazard assessment as provided in §§ 68.20 through 68.42. Pursuant to 40 C.F.R. § 68.30(c), the owner or operator shall use the most recent Census data, or other updated information, to estimate the population potentially affected. Additionally, pursuant 40 C.F.R. § 68.36(a), the owner or operator shall review and update the offsite consequence analyses at least once every five years.

31. The EPA's inspection revealed that Respondent filed the 2014 RMP submittal in a timely manner. Based on information gathered during the EPA's inspection, however, the EPA determined that the data used to determine potentially affected population in the Hazard Assessment was not the most recent Census data. The 2014 RMP submittal showed that the facility used the Degadis Model based on rural topography, the Fertilizer Institute (FTI) and LandView 6 for their distance-to-endpoint (DTE) and population calculations. The supporting documentation was dated June 8, 2009. The Worst Case Scenario and Alternative Case Scenario are based on the 2000 Census. As such, Respondent failed to conduct a Hazard Assessment as provided in §§ 68.20 through 68.42. Specifically:

- a. Respondent failed to use the most recent Census data, or other updated information, to estimate the population potentially affected, as required by 40 C.F.R. § 68.30(c); and
- b. Respondent failed to review and update the offsite consequence analyses at least once every five years, as required by 40 C.F.R. § 68.36(a).

32. Respondent's failure to comply with the RMP requirement of Respondent's failure to comply with the RMP requirement of 40 C.F.R. Part 68, as described above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).112(r).

Count 3

33. 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.

34. Respondent filed as a Program 2 facility while the covered process at the Facility was, in fact, subject to Program 3 requirements. Therefore, the EPA's inspection revealed that Respondent failed to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87, as required by 40 C.F.R. § 68.12(d)(3). Specifically:

- a. Respondent failed to complete a process hazard analysis that addressed the hazards of the process, as required by 40 C.F.R. § 68.67(c)(1);
- b. Respondent failed to complete a process hazard analysis that addressed the stationary source siting, as required by 40 C.F.R. § 68.67(c)(5);
- c. Respondent failed to certify that they have evaluated compliance with the provisions of the Program 3 Prevention Program requirements at least every three years to verify that procedures and practices developed under the prevention program are adequate and are being followed.
- d. Respondent failed to consult with employees and their representatives on conducting and the development of process hazards analyses and on the development of the other elements of process safety management.

35. Respondent's failure to comply with the RMP requirement of Respondent's failure to comply with the RMP requirement of 40 C.F.R. Part 68, as described above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).112(r).

**CONSENT AGREEMENT**

36. Respondent and Complainant agree to the terms of this CA/FO, and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

37. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO set forth below.

38. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

39. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

40. Respondent and Complainant agree to resolve this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

41. The undersigned representative of Respondent certifies that he or she is fully authorized to agree to the terms and conditions of this CA/FO and to execute and legally bind Respondent to such agreement.

42. Respondent understands and agrees that this CA/FO 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 CA/FO.

43. Respondent certifies by signing this CA/FO that, to the best of its knowledge, Respondent's Facility is in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

#### **Effect of Settlement and Reservation of Rights**

44. This CA/FO resolves all civil and administrative claims for the CAA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

45. The effect of settlement described in paragraph 44 is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 43 of this CA/FO.

46. Nothing contained in this CA/FO shall be construed as a release from any other action under law and/or regulation administered by EPA, nor shall it alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

### **Payment of Penalty**

47. Respondent agrees that in settlement of the claims alleged in this CA/FO. Respondent shall pay a civil penalty of Forty-Eight Thousand One Hundred and Seventeen Dollars (\$48,117) within thirty (30) days of the effective date of this CA/FO and as directed in paragraphs 50 and 51 below.

48. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal, state, and local taxes.

49. Respondent consents to the issuance of the Final Order hereinafter recited and to the payment of the civil penalty as set forth below.

50. Respondent shall pay the penalty by cashier's or certified check, by wire transfer, or online. The payment shall reference the Docket Number on the check or wire transfer. If made by cashier's or certified check, the check shall be made payable to "United States Treasury" and remitted to:

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

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

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"

On-line payments are available through the Department of Treasury:

*www.pay.gov*  
Enter "sfo 1.1" in the search field.  
Open the form and complete required files.

51. A copy of the check, transfer, or online payment confirmation shall be sent simultaneously to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and to:

Krystal Stotts  
AWMD/CORP  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

#### **Supplemental Environmental Project**

52. In response to the violations of the CAA, alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by the CAA or any other federal, state, or local law, Respondent shall complete the SEP described in this Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

53. Respondent shall complete the following SEP: Respondent shall install Drager Pack 7000 ammonia monitors on its three mobile T-reactors. Respondent will monitor anhydrous ammonia concentrations at all of their locations in Kansas, Oklahoma, Colorado and Texas and share the monitoring results with local emergency responders. Ammonia concentration data will be recorded at the T-reactor during mixing of phosphoric acid with anhydrous ammonia for a 2-year period beginning on May 1, 2017. Respondent agrees that the installation of the monitoring equipment shall be completed within 60 days of the Effective Date of this Consent Agreement and Final Order.

54. The total expenditure for the SEP shall be no less than Five Thousand Nine Hundred Dollars (\$5,900.00), in accordance with the specifications set forth in Attachment A. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

55. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

56. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to the EPA as follows:

- a. The SEP Completion Report shall contain the following:

- i. a detailed description of the SEP as implemented;
  - ii. itemized costs, documented by copies of purchase orders, receipts, or canceled checks;
  - iii. description of any problems encountered in implementation of the projects and the solution thereto;
  - iv. 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); and
  - v. certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO.
- b. Respondent shall submit all notices and reports required by this CA/FO by first class mail to the following:
- Krystal Stotts  
AWMD/CORP  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.
- c. In itemizing costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the 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.
- d. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

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.

57. Respondent agrees to payment of stipulated penalties as follows:

- a. In the event Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in paragraph 54 of this CA/FO, and/or to the extent that the actual expenditures of the SEP do not equal or exceed the cost of the SEP described in paragraph 54 of this CA/FO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- b. Except as provided in paragraph 56, subparagraph a through v., if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in paragraph 53 of this CA/FO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Five Thousand Seven Hundred Dollars (\$5,700), minus any documented expenditures determined by the EPA to be acceptable for the SEP.
- c. If Respondent fails to timely and completely submit the SEP Completion Report required by paragraph 56 of this CA/FO, Respondent shall be liable for and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250) per day. This stipulated penalty shall begin to accrue on the first day after the SEP Completion Report is due and continue to accrue through the day the SEP Completion Report is submitted.
- d. If the SEP is not completed in accordance with paragraph 53 of this CA/FO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- e. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of the EPA.
- f. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by the EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraphs 50 and 51 of this CA/FO. Interest and late charges shall be paid as stated in paragraph 62 of this CA/FO.

58. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case, nor to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

59. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial assistance 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 the 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.

60. 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.

61. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the chemical accident prevention provisions of the Clean Air Act.”

#### **Late Payment Provision**

62. Pursuant to 31 U.S.C. § 3717, the 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in paragraph 47 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 accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

#### **Effect of Settlement and Reservation of Rights**

63. 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.

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

65. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

66. 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.

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

### **General Provisions**

68. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she 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 he or she represents to this Consent Agreement.

69. 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 the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

71. 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.

**RESPONDENT:**  
**POOLE CHEMICAL CO., INC**

Date: 2/22/17

Jayme Poole Rittenberry  
Signature

Jayme Poole Rittenberry  
Name

Vice President  
Title

**COMPLAINANT:**  
**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 3/8/2017

  
John J. Smith  
Rebecca Weber  
Director, Air and Waste Management Division  
U.S. Environmental Protection Agency, Region 7

Date: 3/8/2017

  
Anne Rauch  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 7

## **FINAL ORDER**

Pursuant to Section 113(d) of the Clean Air Act, 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 Complaint and Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The 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.

IT IS SO ORDERED.

Date: March 13, 2017

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER Of Pool Chemical Co., Inc., Respondent  
Docket No. CAA-07-2017-0002

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy via Email to Attorney for Complainant:

rauch.anne@epa.gov

Copy via First Class Mail to Respondent:

Jayme Poole Rittenberry  
Vice President  
Poole Chemical Co., Inc.  
P.O. Box 53365  
Lubbock, TX 79453

Dated: 3/13/17



Kathy Robinson

Hearing Clerk, Region 7