

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

****FILED**
03 NOV 2021
U.S. EPA - REGION IX**

IN THE MATTER OF:)
)
)
The Gas Company, LLC)
91-390 Kauhi Street)
Kapolei, HI 96707)
)
Respondent.)

Docket No.

CAA(112r)-09-2022-0003

**CONSENT AGREEMENT
AND FINAL ORDER
40 C.F.R. §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”). Respondent is The Gas Company, LLC.
2. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.
3. EPA and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondent agrees to comply with the terms of this CA/FO.

B. EPA'S GENERAL ALLEGATIONS

4. Respondent owns and operates a facility located at 91-390 Kauhi Street in Kapolei, Hawaii (“Facility”). Respondent produces synthetic natural gas (“SNG”) at the Facility for distribution to the City of Honolulu and surrounding communities.
5. On January 13-16, 2020, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11004-12, and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9603(a). Based upon the information gathered during this inspection and subsequent investigation, EPA asserts that Respondent violated certain provisions of the CAA.
6. Pursuant to Section 112(r)(7) of the CAA, 2 U.S.C. § 7412(r)(7), and its implementing regulations, owners, and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary sources in order to protect human health and the environment.
7. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.
8. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).
9. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA pursuant to Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division pursuant to Regional Delegation R9-7-6-A, dated February 11, 2013. On

EPA's behalf, the Director of the Enforcement and Compliance Assurance Division is therefore delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

10. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

11. At all times relevant to this CA/FO, the Facility has been a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

12. At all times relevant to this CA/FO, Respondent has been the "owner or operator" of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

13. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each "regulated substance" at or above which a facility using such a substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as "regulated flammable substances," the TQs are specified at 40 C.F.R. § 68.130, Tables 3 and 4.

14. At all times relevant to this CA/FO, Respondent had 10,000 pounds or more of flammable substances, including a combination of isobutane, isopentane, butane, methane, pentane, and propane in one or more processes at its Facility, exceeding the TQ for one or more of those substances.

15. At all times relevant to this CA/FO, Respondent has been the "owner or operator" of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable threshold quantity in a "process" as defined by 40 C.F.R. § 68.3, and must develop an emergency

response program, and submit and implement an RMP to EPA, and is subject to the Program 3 requirements.

C. EPA'S ALLEGED VIOLATIONS

COUNT I

(Failure to Comply with Process Safety Pertaining to the Technology and Equipment in the Process Requirements)

16. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

17. 40 C.F.R. § 68.65(a) requires that owners or operators complete a compilation of written process safety information before conducting any process hazard analysis, including information pertaining to the technology of the process and information pertaining to the equipment in the process.

18. 40 C.F.R. § 68.65(c)(1) provides that information pertaining to the technology of the process must include at least the following: (i) a block flow diagram or simplified process flow diagram; (ii) process chemistry; (iii) maximum intended inventory; (iv) safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and (v) an evaluation of the consequences of deviations.

19. Based on EPA's inspection and information gathered during EPA's investigation, EPA determined that Respondent did not compile information pertaining to safe upper and lower limits for its Hydrogasifier 1206-1, as required by 40 C.F.R. § 68.65(c)(1)(iv).

20. 40 C.F.R. § 68.65(d)(1) provides that information pertaining to the equipment in the process must include: (i) materials of construction; (ii) piping and instrument diagrams ("P&IDs"); (iii) electrical classification; (iv) relief system design and design basis; (v) ventilation system design; (vi) design codes and standards employed; (vii) material and energy balances for processes

built after June 21, 1999; and (viii) safety systems (e.g. interlocks, detection or suppression systems).

21. Based on EPA's inspection and information gathered during EPA's investigation, EPA determined that Respondent's P&IDs at the Facility, and design codes and standards for its reforming furnaces, were not accurate.

22. Respondent's failure to comply with process safety requirements to compile information pertaining to the technology and equipment in the process is a violation of CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.65.

COUNT II

(Failure to Comply with Process Safety Requirements Related to Generally Accepted Good Engineering Practices)

23. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

24. 40 C.F.R. § 68.65(d)(2) requires that owners or operators shall document that equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP"). EPA generally determines RAGAGEP with reference to standards published by established industry organizations and manufacturers' requirements and recommendations.

25. 40 C.F.R. § 68.65(d)(3) specifies that for existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

26. EPA determined that two of the pressure relief devices, safety valves (PSV-104 and PSV-604) at the Facility were set higher than the maximum allowable working pressure ("MAWP") of the shell sides of two heat exchangers (E-1309-01 and E-1309-02), which is not in accordance

with Section UG-134(a) of the American Society of Mechanical Engineers (“ASME”) Boiler Pressure Vessel Code (stating “when a single pressure relief device is used, the set pressure marked on the device shall not exceed the MAWP of the vessel”), Section 5.4.2.1 of the 2008 American Petroleum Institute (“API”) Standard 520 (stating “[the] set pressure of the device shall not exceed the MAWP”); and Section 3.47 of the 2007 API 521 Standard (stating “[t]he MAWP is the basis for the pressure setting of the pressure-relief devices that protect the vessel”).

27. EPA determined that the control valves for the Facility’s flare piping, naphtha piping, and waste heat boilers were not labeled, which is not in accordance with Section 3.1 of ASME A13.1-2015 (stating that “positive identification of the contents of a piping system shall be by lettered legend, giving the name of the contents in full or abbreviated form. Arrows shall be used to indicate direction of flow. Where flow can be in both directions, arrows in both directions shall be displayed. Contents shall be identified by a legend with sufficient additional details such as temperature, pressure, etc., as are necessary to identify the hazard”), and Section 2.1 of ASME A13.1-2015 (stating “that for the purpose of this standard, piping systems shall include piping of any kind including fittings, valves, and pipe coverings”).

28. EPA determined that the naphtha piping at the Facility was in contact with soil without corrosion protection, which is not in accordance with Section 6.11.3.11 of National Fire Protection Association (“NFPA”) 58-2017 (stating that “the portion of aboveground piping in contact with a support or a corrosion-causing substance shall be protected against corrosion”); and a portion of the piping to flare at the Facility was corroded, which is not in accordance with Section 27.6.4 of NFPA 30-2015 (stating that “aboveground piping systems that are subject to external corrosion shall be suitably protected”).

29. Respondent did not document that the existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use were designed, maintained, inspected, tested and operating in a safe manner.

30. By failing to document that equipment that does not comply with RAGAGEP is designed, maintained, inspected, tested, and operating in a safe manner, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.65.

COUNT III

(Failure to Perform an Adequate Process Hazard Analysis)

31. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

32. 40 C.F.R. § 68.67 requires that owners or operators perform a Process Hazard Analysis (“PHA”) and sets forth the process by which the PHA will be conducted.

33. 40 C.F.R. § 68.67(c) requires that the PHA address, among other things: hazards of the process; engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases; consequences of failure of engineering and administrative controls; and a qualitative evaluation of a range of the possible safety and health effects of failure of controls.

34. Respondent used inappropriate safeguards in its PHA, which may have led to fewer recommendations to address the hazards of the process and engineering and administrative controls applicable to the hazards and their interrelationships.

35. EPA determined that Respondent used pressure safety valves that may not be sized correctly as safeguards, which is not appropriately evaluating the consequences of failure of engineering and administrative controls.

36. Respondent assumed the lowest frequency for likelihood for a release from two pressure relief valves (PSV-202/203) that could result in an explosion, before having all the information, which is not appropriately evaluating the range of the possible safety and health effects of failure of controls.

37. By failing to comply with the PHA requirements, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.67(c).

COUNT IV

(Failure to Promptly Address and Resolve PHA Findings and Recommendations)

38. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

39. 40 C.F.R. § 68.67(e) requires an owner or operator to “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.”

40. EPA determined that Respondent failed to promptly address and resolve the findings and recommendations in the Hydrogen and SNG Feed PHA, the LPG PHA and the Flare System PHA in a timely manner.

41. By failing to resolve the recommendations in three PHAs in a timely manner, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.67(e).

COUNT V

(Failure to Comply with Operating Procedures)

42. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

43. 40 C.F.R. § 68.69(a) requires that owners or operators develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and requires that owners or operators address certain elements including operating limits: consequences of deviation and steps required to correct or avoid the deviation in operating procedures.

44. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to develop and implement a written operating procedure for draining of the equipment that provides clear instructions for safely conducting activities involved in each covered process.

45. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to consistently provide consequences of deviation and the steps required to correct or avoid the deviation in the operating procedures.

46. By failing to comply with the operating procedures requirements, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.69(a).

COUNT VI

(Failure to Comply with Mechanical Integrity Requirements)

47. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

48. 40 C.F.R. § 68.73(b) requires that owners or operators establish and implement written procedures to maintain the on-going integrity of process equipment.

49. 40 C.F.R. § 68.73(c) requires that owners or operators 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.

50. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to establish and implement written procedures to maintain the on-going integrity of the process equipment.

51. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to train each employee involved in maintaining the on-going integrity of process equipment by providing an overview of the process and its hazards, and the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

52. By failing to comply with the mechanical integrity requirements, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(b) and (c).

COUNT VII

(Failure to Comply with Inspection and Testing Requirements for Process Equipment)

53. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

54. 40 C.F.R. § 68.73(d)(2) requires owners and operators to follow RAGAGEP for inspection and testing procedures on process equipment.

55. API Recommended Practice 941, "Steels for Hydrogen Service at Elevated Temperatures and Pressures in Petroleum Refineries and Petrochemical Plants," is a RAGAGEP for identifying, monitoring, and selecting material to reduce the likelihood of damage caused by high temperature hydrogen attack.

56. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to implement inspection and testing procedures for the Hydrogasifier 1206-1

that follow RAGAGEP recommended by two third party contractors hired by Respondent and the API Recommended Practice 941.

57. By failing to follow inspection and testing procedures for the Hydrogasifier 1206-1, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(d).

COUNT VIII

(Failure to Correct Equipment Deficiencies)

58. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

59. 40 C.F.R. § 68.73(e) requires that owners or operators correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

60. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to correct deficiencies for two vessels (1252-01 and 1252-02) and the 03 Reformer Effluent boiler gasket before further use or in a safe and timely manner.

61. By failing to correct deficiencies for vessels 1252-01 and 1252-02 and the 03 Reformer Effluent boiler gasket, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(e).

COUNT IX

(Failure to Comply with Quality Assurance Requirements for Process Equipment)

62. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

63. 40 C.F.R. § 68.73(f)(2) requires owners and operators to perform quality assurance on process equipment including appropriate checks and inspections to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.

64. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to implement a positive material identification program for existing piping systems to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.

65. By failing to perform quality assurance for process equipment, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(f)(2).

COUNT X

(Failure to Comply with Management of Change Requirements)

66. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

67. 40 C.F.R. § 68.75(a) requires owners and operators to establish and implement written procedures to: manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

68. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to implement written procedures to manage the temporary change to address a leaking pipe.

69. By failing to perform quality assurance for process equipment, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.75(a).

COUNT XI

(Failure to Comply with Compliance Audit Requirements)

70. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

71. 40 C.F.R. § 68.79(d) requires that owners or operators promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

72. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to promptly resolve six recommendations from the 2018 compliance audit.

73. By failing to promptly determine and document an appropriate response to six recommendations from the 2018 compliance audit, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.79(d).

COUNT XII

(Failure to Initiate an Incident Investigation)

74. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

75. 40 C.F.R. § 68.81(b) requires that owners or operators initiate an incident investigation as promptly as possible, but not later than 48 hours following the incident.

76. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to initiate an incident investigation within 48 hours of a four to five-gallon spill of naphtha on December 10, 2016, a near-miss incident.

77. By failing to initiate an incident investigation within 48 hours of an incident on December 10, 2016, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.81(b).

COUNT XIII

(Failure to Address Incident Report Recommendations)

78. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

79. 40 C.F.R. § 68.81(e) requires that owners or operators establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

80. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to address and resolve the recommendation from the incident investigation report from the June 5, 2019 near-miss incident by updating operating procedures to specify to never leave an active draining operation unattended.

81. By failing to address and resolve recommendations from the June 5, 2019 incident report findings and recommendations, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.81(e).

COUNT XIV

(Failure to Comply with Emergency Response Program Requirements)

82. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

83. 40 C.F.R. § 68.95(a) requires that owners or operators develop and implement an emergency response program for the purpose of protecting public health and the environment.

84. 40 C.F.R. § 68.95(a)(1)(i) requires that owners or operators maintain an emergency response at the stationary source that contains procedures for informing the public and the appropriate Federal, state, and local emergency response agencies about accidental releases.

85. 40 C.F.R. § 68.95(a)(4) requires that owners or operators develop procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes. This section also requires that owners or operators review and update the plan as appropriate based on changes at the stationary source or new information obtained from coordination activities, emergency response exercises, incident

investigations, or other available information, and ensure that employees are informed of the changes.

86. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to develop an emergency response plan that includes procedures for informing the public and local emergency response agencies about accidents.

87. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to implement the procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

88. By failing to comply with emergency response program requirements, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.95(a).

D. CIVIL ADMINISTRATIVE PENALTY

89. EPA proposes that Respondent be assessed, and Respondent agrees to pay **TWO-HUNDRED THIRTY THOUSAND DOLLARS (\$230,000.00)**, as the civil administrative penalty for the violations alleged herein.

90. The proposed penalty was calculated in accordance with the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" dated June 2012, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVER OF RIGHTS

91. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil

administrative penalty under Section H of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

92. EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

93. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) have been paid, the compliance tasks under section G have been completed, and any delays in performance and/or stipulated penalties have been resolved.

94. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

95. Until all the requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

96. The undersigned representative hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. COMPLIANCE TASKS

97. All submissions to EPA required in this section shall be in writing and sent to Don Nixon, electronically at nixon.donald@epa.gov.

98. All certifications should be signed by an authorized representative of Respondent.

99. If Respondent is unable to complete any of the compliance tasks required in this Section

within the associated schedule, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit this request within seven (7) days of identifying a need for a modification. Based on this request, EPA may in its sole discretion grant or deny, in full or in part, the request for modification.

100. Quarterly Progress Reports. Within three (3) months of the Effective Date of the CA/FO, and every three months thereafter until completion of all requirements of this CA/FO, Respondent shall submit a progress report to EPA (“Progress Report”). Each Progress Report shall describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, all significant developments during the current reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

101. Within two weeks of startup after the reformer furnace instrumentation project is complete, but no later than June 30, 2023, submit to EPA certification that the equipment is installed per RAGAGEP (e.g., NFPA 86), and is functioning as designed.

102. Within 30 days of the Effective Date, for the 2021 Liquid Petroleum Gas Storage and Feed Process PHA, submit to EPA for review and comment, data that justifies, for high consequence scenarios, any assumptions of likelihood of “Not likely to occur within the life of the plant.”

103. By December 31, 2021, submit to EPA documentation (e.g., spreadsheets, printouts from tracking databases) and certification that all recommendations from the 2016 PHA have been addressed.

104. By June 30, 2023, submit to EPA documentation (e.g., spreadsheets, printouts from tracking databases) and certification that all recommendations from the 2017 PHA have been addressed.

105. By December 31, 2022, submit to EPA documentation (e.g., spreadsheets, printouts from tracking databases) and certification that all recommendations from the 2018 PHA have been addressed.

106. Within 60 days of the effective date, provide EPA with a proposal of how the 2018 PHA relief valve recommendation numbers 18004, 18011 and 18012 will be addressed. If the proposal is to add the additional equipment, by December 31, 2022, submit to EPA certification that the additional equipment has been installed.

107. By December 31, 2021, provide certification to EPA that maintenance employees have completed field training for all maintenance procedures currently in existence except for SUP-PRO-3228, for medium naphtha feed pumps 1568-01 and 1568-02.

108. Within 60 days of the effective date, submit to EPA, for review and comment mechanical integrity procedure(s) to monitor the potential growth of high temperature hydrogen attack (“HTHA”) at the bottom of the Hydrogasifier 1206-1 during applicable process equipment shutdowns.

H. PAYMENT OF CIVIL PENALTY

109. Respondent consents to the assessment of and agrees to pay civil administrative penalties of **TWO-HUNDRED THIRTY THOUSAND DOLLARS (\$230,000.00)** in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.

110. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO.

111. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent’s name and address, and the appropriate EPA docket number of this

In the Matter of The Gas Company, LLC
Consent Agreement and Final Order

action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White (301-887-6548)
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 31006

CTX Format

Online Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfol.l" in the search field

Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Armsey.Steven@epa.gov

And

Don Nixon
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Nixon.Donald@epa.gov

112. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to pay the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

113. The penalties specified in this CA/FO shall represent civil administrative penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

114. In the event that Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

115. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of the CA/FO.

116. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

117. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

118. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

J. RESERVATION OF RIGHTS

119. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory, or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA, or any other statutory, regulatory, or common law enforcement authority in the United States.

120. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA, or any other applicable local, state, tribal, or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, tribal, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state, or local permit.

121. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

122. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

K. MISCELLANEOUS

123. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

124. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

125. Each party to this action shall bear its own costs and attorneys' fees.

126. Respondent consents to entry of this CA/FO without further notice.

L. EFFECTIVE DATE

127. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

In the Matter of The Gas Company, LLC
Consent Agreement and Final Order

Respondent The Gas Company, LLC

DATE: Sept 30, 2021

BY: 

Kevin Nishimura
Vice President, Operations

Complainant United States Environmental Protection Agency, Region IX

BY: **AMY MILLER-**
BOWEN  Digitally signed by AMY
MILLER-BOWEN
Date: 2021.10.22 08:28:16
-07'00'

Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance
Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) in the Matter of The Gas Company (Docket No. CAA (112r) 09-2022-0003) be entered and that Respondent pay a civil penalty of TWO HUNDRED THIRTY DOLLARS (\$230,000.00), and implement the compliance tasks described in Section G, in accordance with all terms and conditions of this CA/FO.

**Wong,
Beatrice**

Digitally signed by Wong,
Beatrice
Date: 2021.11.03
08:52:37 -07'00'

Beatrice Wong
Regional Judicial Officer
U.S. EPA, Region IX

In the matter of The Gas Company, LLC
Consent Agreement and Final Order

CERTIFICATE OF SERVICE

This is to certify that a fully executed Consent Agreement and Final Order in the matter of The Gas Company, LLC [Docket # CAA(112R)-09-2022-0003] was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the following parties.

RESPONDENT:
(Via Electronic Mail)

Kevin Nishimura
Vice President, Operations
The Gas Company, LLC:
Email: knishimu@hawaiigas.com

COMPLAINANT:
(Via Electronic Mail)

Rebekah Reynolds, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
Email: Reynolds.Rebekah@epa.gov

Steven Armsey
Regional Hearing Clerk
Office of Regional Counsel
U.S. EPA, Region IX