UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 28 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles Pietrucha, Superintendent
Water Works Department
City of Hammond, Indiana
925 Casino Center Drive
Hammond, Indiana 46320

Re: City of Hammond, Indiana Water Works Department Consent Agreement and Final Order.
Docket No. **CAA-05-2015-0003**

Dear Mr. Pietrucha:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on October 28, 2014. Please pay the civil penalty in the amount of $51,700.00 in the manner prescribed in paragraphs 108 through 110 and reference your check with the docket number. Within 180 days of the above date, you will need to complete both Supplemental Environmental Projects (SEPs) as prescribed in paragraphs 114-123. Within 30 days of completion of each SEP you are required to submit a final report regarding the Supplemental Environmental Projects as prescribed in paragraphs 123.

Please feel free to contact Greg Chomycia at chomycia.greg@epa.gov or (312)353-8217 if you have any questions regarding the enclosed documents. Please direct any legal questions to John Matson, Associate Regional Counsel at (312) 886-2243. Thank you for your assistance in resolving this matter.

Sincerely,

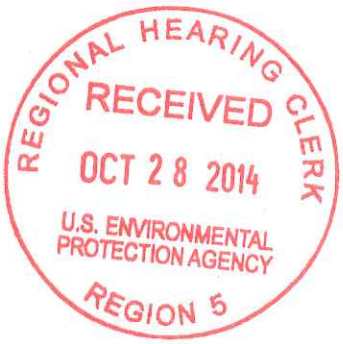
for

Michael E. Hans, Chief
Chemical Emergency
Preparedness and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**Consent Agreement and Final Order**
	)	**Pursuant to 40 C.F.R. § 22.13(b)**
City of Hammond, Indiana	)	**In a Proceeding to Assess a Civil Penalty**
Water Works Department	)	**Under Section 113(d) of the**
	)	**Clean Air Act, 42 U.S.C. § 7413(d)**
Hammond, Indiana	)	
	)	**Docket No.**
Respondent.	)	**CAA-05-2015-0003**



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 Act), 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 Superfund Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is the City of Hammond, Indiana, Water Works Department (HWWD or Respondent), a municipal owned utility organized under the laws of the State of 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 simultaneously commenced and concluded by the issuance of a consent agreement and final order (CAFO). *See* 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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the 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 the 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.

Statutory and Regulatory Background

9. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), required EPA's Administrator (Administrator), to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances.

10. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), required the Administrator to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances. On June 20, 1996, U.S. EPA promulgated regulations implementing Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). These regulations are commonly known as the Risk Management Program regulations and are codified at 40 C.F.R. Part 68.

11. The Risk Management Program regulations seek to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur, by requiring owners and operators of certain stationary sources to, among other things: (1) develop and implement a management system to oversee the implementation of the risk management program elements; (2) develop and implement a risk management program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program; and (3) submit to EPA a risk management plan (RMP) describing the risk management program for the source. *See* 40 C.F.R. Part 68, Subparts A-G.

12. Sections 112(r)(3) and (5) of the Act, 42 U.S.C. § 7412(r)(3) and (5), required the Administrator to promulgate a list of regulated substances with the threshold quantity of the substance which is known to cause or may be reasonably anticipated to cause death, injury or serious effects to human health. EPA subsequently promulgated 40 C.F.R. Part 68, Subpart F,. listing the regulated substances and their threshold quantities. *See* 40 C.F.R § 68.130, Table 1.

13. The Risk Management Program regulations apply to the owner and operator of any "stationary source" that has more than a "threshold quantity" of a "regulated substance" in a "process." *See* 40 C.F.R. § 68.10(a).

14. A "stationary source" is any building, structure, facility, or installation which emits or may emit any air pollutant. *See* Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3).

15. A "threshold quantity" is the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, 42 U.S.C. § 7412(r)(5), listed in 40 C.F.R § 68.130, and determined to be present at the stationary source as specified in 40 C.F.R § 68.115. *See* 40 C.F.R. § 68.3.

16. A "regulated substance" is any substance listed in 40 C.F.R § 68.130, Table 1. *See* 40 C.F.R. § 68.3.

17. Chlorine is a "regulated substance" under the Risk Management Program regulations and as defined in 40 C.F.R. § 68.3.

18. The "threshold quantity" for chlorine under the Risk Management Program regulations is 2,500 pounds per year. *See* 40 C.F.R. § 68.130, Table 1.

19. A "process" is any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such a substance. 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. *See* 40 C.F.R. § 68.3.

20. A "covered process" under the Risk Management Program regulations is a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115. *See* 40 C.F.R. § 68.3.

General Risk Management Program Requirements

21. Pursuant to 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. Part 68.

22. 40 C.F.R. § 68.12(a) requires an owner or operator of a facility subject to the Risk Management Program regulations to develop and implement in accordance with the provisions of 40 C.F.R. §§ 68.150-68.185, an RMP for preventing accidental releases to the air and minimizing the consequences of releases that do occur.

23. 40 C.F.R. § 68.150(a)-(b) require an owner or operator of a facility subject to the Risk Management Program regulations to submit to EPA its RMP by no later than the latest of the following dates:

a. June 21, 1999;
b. three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or
c. the date on which a regulated substance is first present in more than a threshold quantity in a process.

24. 40 C.F.R. § 68.150(d) requires an owner or operator of a facility subject to the Risk Management Program regulations to update and correct its RMP in accordance with the provisions of 40 C.F.R. §§ 68.190 and 68.195.

25. 40 C.F.R. § 68.190(b) requires, at a minimum, that an owner or operator of a facility subject to the Risk Management Program regulations revise and update its RMP by no later than the latest of:

a. Section 68.190(b)(1): once every five years from the date of its initial submission; or the most recent update required by 40 C.F.R. § 68.190(b)(2)-(b)(7);
b. Section 68.190(b)(2): no later than three years after a newly regulated substance is first listed by EPA;
c. Section 68.190(b)(3): no later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity;
d. Section 68.190(b)(4): no later than the date on which a regulated substance is first present above a threshold quantity in a new process;
e. Section 68.190(b)(5): within six months of a change that requires a revised process hazard analysis (PHA) or hazard review;
f. Section 68.190(b)(6): within six months of a change that requires a revised offsite consequence analysis provided in 40 C.F.R. § 68.36; or
g. Section 68.190(b)(7): within six months of a change that alters the program level that applied to any covered process.

Additional Program 3 Requirements

26. The Risk Management Program regulations separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. All covered processes must fulfill additional requirements applicable to one of these three tiers of covered processes. See 40 C.F.R. § 68.10.

27. Pursuant to 40 C.F.R. § 68.10(c), Program 3 applies to all processes which do not meet the requirements of Program 1 eligibility set forth at 40 C.F.R. § 68.10(b), and if either one of the following conditions are met:

a. The process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or
b. The process is subject to the Occupational Safety Health Administration (OSHA) process safety management standard set forth at 39 C.F.R. § 1910.199.

28. 40 C.F.R. § 68.12(d) requires the owner or operator of a stationary source with a process subject to the Program 3 Risk Management Program requirements to fulfill certain requirements, including, but not limited to:

a. develop and implement a management system as provided at 40 C.F.R. § 68.15;
b. conduct a hazard assessment as provided at 40 C.F.R. §§ 68.20 through 68.42;
c. implement the prevention requirements set forth at 40 C.F.R. §§ 68.65 through 68.87;
d. develop and implement the emergency response requirements set forth in 40 C.F.R. §§ 68.90 and 68.95; and
e. include in its submitted RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

29. The Administrator may assess a civil penalty of up to $32,500 per day of violation, up to a total of $270,000, for violations that occurred on or after March 15, 2004, but before January 13, 2009, and may assess a civil penalty of up to $37,500 per day of violation up to a

total of $295,000 for violations that occurred on and after January 13, 2009. *See* Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), 40 C.F.R. Part 68, and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

30. 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 (Attorney General) jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

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

Factual Allegations and Alleged Violations

32. Respondent is a municipally owned utility, and is thus a "municipality," as that term is defined in Section 302(f) of the Act, 42 U.S.C. § 7602(f).

33. Respondent was and is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

34. At all times relevant to this CAFO, Respondent owned and operated a water treatment facility located at 925 Casino Center Drive, Hammond, Indiana (the Facility).

35. For purposes of the requirements of 40 C.F.R. Part 68, Respondent is the "owner or operator" of the Facility, as that term is defined at Section 112(a)(9) of the Act.

36. The Facility is a "stationary source," as that term is defined at 40 C.F.R. § 68.3.

37. Beginning prior to 1999, and at all times relevant to this CAFO, Respondent used, stored, handled, and moved, multiple one ton containers of the regulated substance chlorine at the Facility in amounts over the chlorine threshold quantity of 2,500 pounds per year.

38. At all times relevant to this CAFO, Respondent's use, storage, handling, and movement of the chlorine containers at the Facility was a "process," as that term is defined at 40 C.F.R. § 68.3.

39. At all times relevant to this CAFO, Respondent's use, storage, handling, and movement of the chlorine containers at the Facility was a "covered process" as that term is defined at 40 C.F.R. § 68.3.

40. At all times relevant to this CAFO, Respondent's chlorine process at the Facility did not meet the Program 1 requirements of 40 C.F.R. § 68.10(b), and was subject to the OSHA Process Safety Management Standard.

41. At all times relevant to this CAFO, Respondent's chlorine process at the Facility was a process subject to the Program 3 Risk Management Program requirements.

42. On May 21, 1999, Respondent submitted its initial RMP for the chlorine process at the Facility.

43. On April 19, 2006, Respondent submitted its revised and updated RMP for the chlorine process at the Facility.

44. On May 9, 2011, Respondent submitted to U.S. EPA its second revised and updated RMP for the chlorine storage process at the Facility (the 2011 RMP).

Count I

45. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

46. 40 C.F.R. § 68.15(a) requires the owner or operator of a stationary source with processes subject to Program 3 requirements to develop a management system to oversee the implementation of its Risk Management Program (RM Program) elements.

47. 40 C.F.R. § 68.15(b) requires the owner or operator to assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the RM Program elements.

48. 40 C.F.R. § 68.15 (c) requires that when responsibility for implementing individual requirements of this part is assigned to persons other than the person assigned overall responsibility, the names or positions of these assigned people are to be documented and the lines of authority shall be defined in an organization chart or similar document.

49. On July 12, 2011, Respondent had not documented the names or positions of the individuals responsible for the implementation of the RM Program elements and failed to document the lines of authority between them.

50. Respondent's failure to document the names or positions of the individuals responsible for the implementation of the RM Program elements, and the lines of authority between them violated 40 C.F.R. § 68.15(c) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count II

51. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

52. 40 C.F.R. § 68.20 requires the owner or operator to prepare a worst-case release scenario analysis as provided for in 40 C.F.R. § 68.25.

53. 40 C.F.R. § 68.25(a)(2)(i) requires the owner or operator of a stationary source with processes subject to Program 3 requirements to analyze and report in the RMP one worst-case release scenario that is estimated to create the greatest distance in any direction to a specified endpoint resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in 40 C.F.R. § 68.22.

54. Respondent failed to analyze and report in its 2011 RMP one worst-case release scenario that was estimated to create the greatest distance in any direction to a specified endpoint resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in 40 C.F.R. § 68.22.

55. Respondent's failure to analyze and report in its 2011 RMP one worst-case release scenario that was estimated to create the greatest distance in any direction to a specified endpoint resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions violated 40 C.F.R. § 68.25(a)(2)(i) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count III

56. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

57. 40 C.F.R. § 68.30(d) provides that the owner or operator shall estimate the population potentially affected by a chemical accident at the Facility to two significant digits.

58. Respondent failed to estimate the population potentially affected by a chemical accident at the Facility to two significant digits in the 2011 RMP.

59. Respondent's failure to estimate the population potentially affected by a chemical accident at the Facility to two significant digits in the 2011 RMP violated 40 C.F.R. § 68.30(d) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count IV

60. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

61. 40 C.F.R. § 68.36(a) requires the owner or operator to review and update the offsite consequence analysis at least once every five years.

62. Respondent has not reviewed and updated the offsite consequence analysis for the Facility since it submitted its RMP in 1999.

63. Respondent's failure to review and update the offsite consequence analysis for the Facility at least once every five years violated 40 C.F.R. § 68.36(a) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count V

64. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

65. 40 C.F.R. § 68.39(b) requires the owner or operator to maintain as part of its offsite consequence analysis a description of the alternative release scenarios identified; the assumptions and parameters used; and the rationale for the selection of specific alternative release scenarios.

66. Respondent failed to maintain as part of its offsite consequence analysis for the Facility a description of the alternative release scenarios identified; the assumptions and parameters it used; and its rationale for selecting specific alternative release scenarios.

67. Respondent's failure to maintain as part of its offsite consequence analysis for the Facility a description of the alternative release scenarios identified; the assumptions and parameters used; and the rationale for the selection of specific alternative release scenarios violated 40 C.F.R. § 68.39(b) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count VI

68. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

69. 40 C.F.R. § 68.65(a) requires the owner or operator to complete a compilation of written process safety information before conducting any required PHA for the Facility. The process safety information must include information pertaining to:

(a) the hazards of the regulated substances used or produced by the process;
(b) the technology of the process; and
(c) the equipment in the process.

70. 40 C.F.R. § 68.65(d)(1) requires, *inter alia,* that the owner or operator maintain up-to-date information pertaining to the equipment in the process, including: materials of construction; piping and instrument diagrams; electrical classification; relief system design and design basis; ventilation system design; design codes and standards employed; material and energy balances for processes built after June 21, 1999; and safety systems.

71. On or before July 11, 2011, Respondent failed to maintain up-to-date equipment safety information on the chlorine process at the Facility.

72. Respondent's failure to maintain up-to-date equipment safety information on the chlorine process at the Facility violated 40 C.F.R. § 68.65(d)(1) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count VII

73. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

74. 40 C.F.R. § 68.65(d)(2) requires the owner or operator to document that its equipment in a process complies with recognized and good engineering practices.

75. On or before July 11, 2011, Respondent had not documented that the equipment in its chlorine process complied with recognized and good engineering practices.

76. Respondent's failure to document that the equipment in its chlorine process complied with recognized and good engineering practices violated 40 C.F.R. § 68.65(d)(2) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count VIII

77. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

78. 40 C.F.R. § 68.67(a) requires the owner or operator to conduct an initial PHA of its regulated process.

79. 40 C.F.R. § 68.67(f) requires the owner or operator to update and revalidate the PHA at least every five years after the completion of the initial PHA.

80. Respondent conducted an initial PHA on the chlorine process for the Facility in 1999.

81. On or before July 11, 2011, Respondent had not updated its initial 1999 PHA for the chlorine process for the Facility.

82. Respondent's failure to update its 1999 PHA for the chlorine supply process for the Facility at least every five years violated 40 C.F.R. § 68.67(f) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count IX

83. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

84. 40 C.F.R. § 68.69(a) requires the owner or operator to develop and implement written operating procedures that provide clear instructions for safely conducting activities in each covered process consistent with the process safety information, and must include, *inter alia,* the following elements:

a. Steps for each operating phase, including operating procedures for all normal operations; and

b. Operating limits, including the consequences of deviation and the steps to avoid or correct deviation in the written operating procedures.

85. 40 C.F.R. § 68.69(c) requires the owner or operator to annually certify that the operating procedures are current and accurate.

86. On or before July 11, 2011, Respondent did not have written operating procedures providing clear instructions for safely conducting all normal operations involved in the chlorine process at its Facility, the consequences of deviating from the operating limits, and the steps to avoid or correct a deviation in the written operating procedures.

87. On or before July 11, 2011, Respondent had not performed annual certifications of the written operating procedures for the chlorine process at the Facility.

88. Respondent's failure to have all of the required elements in the Facility's written operating procedures for the chlorine process, and its failure to perform annual certifications of the written operating procedures for the chlorine process violated 40 C.F.R. § 68.69(a) and (c) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count X

89. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

90. 40 C.F.R. § 68.73(a) requires the owner or operator to establish and implement written procedures to maintain the ongoing integrity of the following process equipment:

a. Pressure vessels and storage tanks;
b. Piping systems (including piping components such as valves);
c. Relief and vent systems and devices;
d. Emergency shutdown systems;
e. Controls (including monitoring devices and sensors, alarms, and interlocks); and
f. Pumps.

91. 40 C.F.R. § 68.73 requires the owner or operator to:

a. Establish and implement written procedures for maintaining the integrity of the process equipment. *See* 40 C.F.R. § 68.73(b);
b. Train each employee involved in maintaining the on-going integrity of the process in the applicable procedures. *See* 40 C.F.R. § 68.73(c); and
c. Perform inspections and tests on process equipment. *See* 40 C.F.R. § 68.73(d).
    i. The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience. *See* 40 C.F.R. § 68.73(d)(2); and
    ii. Document inspections and tests that have been performed on process equipment. *See* 40 C.F.R. § 68.73(d)(4).

92. On or before July 11, 2011, Respondent had not:

a. established and implemented written procedures for maintaining the integrity of the chlorine process equipment at the Facility;
b. trained each employee involved in maintaining the on-going integrity of the chlorine process in the applicable procedures;
c. performed inspections and tests on the chlorine process equipment at a frequency consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience; and
d. properly documented the inspections and tests that Respondent performed on the chlorine process equipment.

93. Respondent's failures to develop the required written procedures for the chlorine process equipment at the Facility, train each applicable employee, perform inspections at the required frequency, and document the inspections and tests, violated 40 C.F.R. § 68.73(b)-(d), and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count XI

94. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

95. 40 C.F.R. § 68.75(a) requires the owner or operator to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process.

96. Respondent failed to establish and implement written procedures to manage changes that affect the chlorine process at the Facility.

97. Respondent's failure to establish and implement written procedures to manage changes that affect the chlorine process at the Facility violated 40 C.F.R. § 68.75(a) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count XII

98. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

99. 40 C.F.R § 68.79(a) requires the owner or operator to certify at least every three years that it has evaluated and determined that it is in compliance with the Program 3 Risk Management Program requirements set forth at 40 C.F.R §§ 68.65-68.95, and to verify that procedures and practices developed under the Risk Management Program regulations are adequate and being followed.

100. Respondent failed to certify at least every three years that it evaluated and determined that it was in compliance with the Program 3 Risk Management Program requirements set forth at 40 C.F.R §§ 68.65-68.95, and failed to verify that the procedures and practices developed under the Risk Management Program regulations for the Facility were adequate and being followed.

101. Respondent's failure to certify at least every three years its compliance with the Program 3 Risk Management Program requirements violated 40 C.F.R. § 68.79(a) and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Count XIII

102. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

103. 40 C.F.R § 68.87(b) requires the owner or operator, when selecting a contractor, to obtain and evaluate the contractor's safety performance and programs.

104. Respondent retained a contractor to perform work at the Facility on January 10, 2012.

105. Respondent failed to obtain and evaluate the contractor's safety performance and programs when it selected the contractor to perform work on January 10, 2012.

106. Respondent's failure to obtain and evaluate the contractor's safety performance and programs violated 40 C.F.R. § 68.87(b), and Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

Civil Penalty

107. Based on the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), U.S. EPA's Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012), the facts and circumstances of this case, other factors such as cooperation, promptly returning to compliance, and Respondent's agreement to perform two supplemental environmental projects (SEP), as described below, Complainant has determined that an appropriate civil penalty to settle this action is $51,700.00.

108. Within 30 days after the effective date of this CAFO, Respondent must pay a $51,700.00 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

U.S. Treasury REX Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

109. In the comment area of the electronic funds transfer, state Respondent's name, the docket number of this CAFO and the billing document number.

110. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a notice of payment that states Respondent's name and transmittal letter to:

Attn: Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Greg Chomycia (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

John Matson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

112. If Respondent does not timely pay the civil penalty, or any stipulated penalties under paragraph 128, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

113. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In

addition, Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

Supplemental Environmental Projects

114. Respondent must complete two supplemental environmental projects (SEP1 and SEP2) designed to protect the environment and public health by preventing, and reducing the risk of a release of chlorine.

a. SEP1 consists of Respondent installing emergency stop valves on the chlorine supply process for the Facility.
b. SEP2 consists of Respondent making upgrades to the security system for the Facility.

115. Respondent must complete SEP1 as described in Exhibit A of this CAFO.[1] SEP1 is a preventative public health project that will decrease the risk of chlorine being released into the surrounding community and the environment. Respondent must not cause the unpermitted or unauthorized release to the environment of any chlorine, or any other toxic or hazardous chemical during the performance of the SEP.

116. Respondent must spend at least $24,000 for the engineering design, project management, purchase and installation of SEP1. The $24,000 must not include any costs directed toward updating the Facility's Risk Management Program.

[1]HWWD has asserted a claim of Confidential Business Information (CBI) for the detailed descriptions of SEP1 and SEP2 (i.e. Exhibits A and B) for security reasons. In accordance with EPA's CBI policy, EPA management reviewed the detailed descriptions of SEP1 and SEP2 during its review and approval of this CAFO, but EPA redacted Exhibits A and B in the CAFO it filed with EPA's Regional Hearing Clerk.

117. Respondent will begin installation of SEP1 within 90 days of the date of this CAFO and must fully complete SEP1 within 180 days of the effective date of this CAFO.

118. Respondent must complete SEP2 as described in Exhibit B of this CAFO. SEP2 is a preventative public health project that will decrease the risk of chlorine being released into the surrounding community and the environment. Respondent must not cause the unpermitted or unauthorized release to the environment of any chlorine, or any other toxic or hazardous chemical during the performance of the SEP.

119. Respondent must spend at least $53,000 for the engineering design, project management, purchase and installation of SEP2. The $53,000 must not include any costs directed toward updating the Facility's Risk Management Program.

120. Respondent will begin installation within 90 days of the date of this CAFO and must complete SEP2 within 180 days of the effective date of this CAFO.

121. Through its signature on this CAFO, Respondent certifies as follows:

That HWWD is not required to perform or develop either or both of these SEPs by any law, regulation, grant, order, or agreement or as injunctive relief as of the date that HWWD executes this CAFO. HWWD further certifies that it has not received, and is not negotiating to receive, credit for either of these SEPs in any other enforcement action.

That HWWD is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as either or both of these SEPs. HWWD further certifies that, to the best of the signatory's knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as either or both of these SEPs, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO on behalf of HWWD (unless the project was barred from funding as statutorily ineligible). For 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 expired.

122. Respondent is responsible for the satisfactory completion of SEP1 and SEP2 in accordance with the requirements of this CAFO and Exhibits A and B.

123. Respondent must submit a SEP completion report to EPA within 30 days after completion of each SEP. This report shall contain the following information:

a. A detailed description of the SEP as completed;

b. A description of any operating problems and the actions taken to correct the problems;

c. The itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;

d. A certification that Respondent has completed the SEP in compliance with this CAFO; and

e. A description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution prevention, if feasible).

124. Respondent must submit all reports required by this CAFO by first class mail to:

Greg Chomycia (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

125. For each report that Respondent submits under paragraph 123 above, it must certify that the report is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

126. Following receipt of the SEP completion report described in paragraph 123 above, EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP completion report;

b. There are deficiencies in the SEP as completed or in the SEP completion report and EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP completion report and EPA will seek stipulated penalties under paragraph 125 below.

127. If EPA exercises option b. under Paragraph 126 above, Respondent may object in writing to the deficiency notice within 30 days of receiving the notice. The parties will have 60 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEPs as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 128 below.

128. If Respondent violates any requirement of this CAFO relating to either or both of these SEPs, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b. below, if Respondent does not complete either or both of these SEPs satisfactorily according to the requirements of this CAFO, including the schedules in paragraphs 117 and 120 above, Respondent must pay an additional penalty of $45,700.

b. If Respondent does not complete either or both of these SEPs satisfactorily according to the requirements of this CAFO, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documents, that it has spent at least 90 percent of the amount set forth in paragraphs 116 and 119 above, Respondent will not be liable for any stipulated penalty under subparagraph a. above.

c. If Respondent completes both of these SEPs satisfactorily according to the requirements of this CAFO, but spends less than 90 percent of the amount set forth in paragraphs 116 and 119 above, Respondent must pay an additional civil penalty of the difference between the total amount Respondent actually spent on SEP1 and SEP2 and $77,000.

d. If Respondent fails to comply with the schedule in paragraphs 117 and 120 above, for implementing the SEPs, or fails to submit timely the SEP completion report required by paragraph 123 above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

Penalty per violation per day	Period of violation
$100	1st through 14th day
$250	15th through 30th day
$500	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until Respondent achieves compliance with the milestone.

129. EPA's determination of whether Respondent satisfactorily completed the SEPs and whether Respondent made good faith and timely efforts to complete the SEPs will bind Respondent.

130. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 108-112 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts as provided in paragraph 113 above.

131. Any public statement that Respondent makes referring to either or both of the SEPs must include the following language, "Company undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Company for violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r)."

132. If an event occurs which causes or may cause a delay in completing either or both of these SEPs as required by this CAFO:

a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing either or both of these SEPs. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete either or both of these SEPs.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing either or both of these SEPs, the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may delay in completing either or both of these SEP, EPA will notify Respondent in writing of its decision and any delays in completing either or both of these SEPs will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing either or both of these SEPs. Increased costs for completing either or both of these SEPs will not be a basis for an extension of time under subparagraph b. above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

133. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing either or both of these SEPs.

General Provisions

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

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

136. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations. Except as provided in Paragraph 134, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

137. Respondent certifies that it is complying fully with Section 112(r) of the Act and 40 C.F.R. Part 68.

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

139. 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.

140. Each party agrees to bear its own costs and attorneys' fees in this action.

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

142. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk's office.

In the Matter of City of Hammond, Indiana, Water Works Department
Docket No. CAA-05-2015-0003

City of Hammond, Indiana, Water Works Department, Respondent

Date: 9-12-2014 By: _____
Edward Krusa, Chief Executive Officer
City of Hammond, Indiana, Water Works Department

United States Environmental Protection Agency, Complainant

Date: 10-17-14 By: _____
for Richard Karl, Director
Superfund Division

In the Matter of City of Hammond, Indiana, Water Works Department
Docket No. CAA-05-2015-0003

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.

10/24/2014
Date

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency

In the Matter of: City of Hammond, Indiana
Docket No. CAA-05-2015-0003

Certificate of Service

I, Jarrah P. Sanders, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by hand delivery to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent's attorney by placing it in the custody of the United States Postal Service addressed as follows:

on the 28 day of October, 2014

Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5