EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Maximilian Bodl (Name of Case Attorney) 5/25/17 (Date)

in the ORC (RAA) (Office & Mail Code) at 918-1113 (Phone number)

Case Docket Number CWA-01-2017-0004

Site-specific Superfund (SF) Acct. Number _____

✓ This is an original debt ____ This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Pawtucket Power Associates, LP
181 Concord Street
Pawtucket, RI 02860

Total Dollar Amount of Receivable $ 109,375 Due Date: 6/24/17

SEP due? Yes _____ No ✓ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST $ _____ on _____

2nd $ _____ on _____

3rd $ _____ on _____

4th $ _____ on _____

5th $ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____ _____
in the Financial Management Office Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

May 25, 2017

BY HAND-DELIVERY

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Mailcode ORA18-1
Boston, MA 02109-3912

Re: *In the Matter of Pawtucket Power Associates, LP,*
Docket No. CAA-01-2017-0004

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order.

Thank you for your attention to this matter.

Sincerely,

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Jim Pollock, President and Secretary Treasurer
Pawtucket Power Associates, LP
1210, 715-5th Avenue S.W.
Calgary, Alberta, Canada
T2P 2X6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF Pawtucket Power Associates, LP 181 Concord Street Pawtucket, RI 02860 Respondent.	Docket No. CAA-01-2017-0004 **CONSENT AGREEMENT AND FINAL ORDER**

CONSENT AGREEMENT

The United States Environmental Protection Agency, Region 1 ("EPA" or "Complainant") and Respondent Pawtucket Power Associates, LP enter into this Consent Agreement and Final Order ("CAFO") by mutual consent pursuant to 40 C.F.R § 22.13(b) 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. Part 22 ("Consolidated Rules of Practice"). This CAFO resolves Respondent's liability for alleged violations of the chemical accident prevention provisions of Section 112(r)(7) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(7), and implementing federal regulations found at 40 C.F.R. Part 68.

EPA and Respondent agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b) and 22.18(b). EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before taking any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

I. STATUTORY AND REGULATORY BASIS

1. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish, for each listed substance, the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a Risk Management Plan ("RMP").

2. The regulations promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are found at 40 C.F.R. Part 68.

3. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

4. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 ("RMP chemicals" or "regulated substances") and their associated threshold quantities, in accordance with the requirements of Sections 112(r)(3) and (7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and (7). This list includes anhydrous ammonia as an RMP chemical and identifies a threshold quantity of 10,000 pounds.

5. A "process" is defined by 40 C.F.R. § 68.3 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.

6. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

7. Each process in which a regulated substance is present in more than a threshold quantity ("covered process") is subject to one of three risk management programs. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Pursuant to 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the Occupational Safety and Health Administration ("OSHA") process

safety management ("PSM") standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

8. Anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds is subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119.

9. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source subject to the requirements of Part 68 submit an RMP to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with Part 68 in a summary format. For example, the RMP for a Program 3 process documents compliance with the elements of a Program 3 Risk Management Program, including 40 C.F.R. Part 68, Subpart A (including General Requirements and a Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

10. Additionally, 40 C.F.R. § 68.190(b) also requires that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update. Other aspects of the prevention program must also be periodically updated.

11. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42

U.S.C. § 7412(r), in amounts up to $37,500 per day for violations occurring from January 13, 2009 to November 2, 2015.

12. EPA and the United States Department of Justice have determined that this action is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

III. GENERAL ALLEGATIONS

13. Respondent Pawtucket Power Associates, LP ("Pawtucket Power") is a limited partnership organized under the laws of Massachusetts and owns a combined-cycle cogeneration power plant facility located at 181 Concord Street, Pawtucket, Rhode Island, 02860 ("the Facility"). Pawtucket Power operated the Facility with the assistance of its contractor, PurEnergy Operating Services, LLC.

14. The Facility is located in Pawtucket, Rhode Island, and according to the U.S. Census data from 2010, several thousand people live near the Facility.

15. Respondent Pawtucket Power is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), against whom an administrative order assessing a civil penalty may be issued under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

16. From approximately 1991 to December 2013, the Facility was operated as a combined-cycle cogeneration power plant.

17. Beginning in April 2012, the Facility halted full-time operations and began operating one or two days per year in order to conduct ISO-New England capability tests; however, the ammonia refrigeration system at the Facility remained intact and continued to contain ammonia. According to Respondent, during the curtailed operations time period before and after the

inspection, the ammonia was stored in the chiller building and not distributed throughout the full system. The associated piping and valves were drained and not in service.

18. On August 8, 2013, EPA inspectors visited the Facility and performed an inspection ("the Inspection") to assess Respondent's compliance with Section 112(r) of the CAA.

19. At the time of the Inspection, the Facility was a building or structure from which an accidental release may occur and was therefore a "stationary source," as defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

20. At all times relevant to the violations alleged herein, Respondent was the "owner[s] or operator[s]" of the Facility, as defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

21. At the time of the Inspection, Respondent used anhydrous ammonia in a refrigeration process ("the Process"), as defined by 40 C.F.R. § 68.3.

22. On June 18, 1999, Respondent submitted the initial RMP submission for the Facility. On June 18, 2009, Respondent submitted the most recent RMP submission for the Facility ("the 2009 RMP"). In the 2009 RMP, Respondent reported that the Facility had 13,000 pounds of anhydrous ammonia in a Program Level 3 process and 28,000 pounds of aqueous ammonia in a Program Level 2 process at the Facility.

23. The most recent Process Hazard Analysis ("PHA") for the Facility was completed on June 16, 2011 and June 22, 2011.

24. In 2014, Respondent submitted a Tier 2 report pursuant to Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C.

§§ 11021 and 11022, reporting that the Facility used 13,000 pounds of ammonia in reportable year 2013.

25. Accordingly, at the time of the Inspection, the Process was a "covered process" subject to the provisions of Part 68 because Respondent "stored" and "handled" the RMP chemical anhydrous ammonia at the Facility in a process in an amount greater than 10,000 pounds.

26. According to Respondent's 2009 RMP, there were public receptors within the distance to the endpoint for a worst case release of the amount of anhydrous ammonia used in the Process. Likewise, modeling performed by EPA indicates that the endpoint for a worst case release from the Process was greater than the distance to a public receptor.

27. Additionally, at the time of the Inspection, the Process was subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119 because it used anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds.

28. Therefore, in accordance with 40 C.F.R. § 68.10(a)–(d), at the time of the allegations herein, Respondent's storage and handling of anhydrous ammonia in its Process at the Facility was subject to the requirements of RMP Program 3.

29. Ammonia presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Exposure to 300 parts per million is immediately dangerous to life and health. Ammonia is also flammable at concentrations of approximately 16% to 25% by volume in air. It can explode if released in an enclosed space with a source of ignition present, or if a vessel containing anhydrous ammonia is exposed to fire. In light of the potential hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards outlining

the recognized and generally accepted good engineering practices ("RAGAGEP") in the ammonia refrigeration industry. In collaboration with the American National Standards Institute ("ANSI"), the International Institute of Ammonia Refrigeration ("IIAR") has issued (and updates) "Standard 2: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems," along with other applicable standards and guidance. Also in collaboration with the American National Standards Institute, the American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") has issued (and updates) "Standard 15: Safety Standard for Refrigeration Systems." These standards are consistently relied upon by refrigeration experts and are sometimes incorporated into state building, fire, and mechanical codes.

30. The Inspection and EPA's review of subsequently submitted information, including the 2009 RMP submission, revealed some potentially dangerous conditions relating to the Process, including:

a. Failure to comply with RMP management requirements of 40 C.F.R. § 68.15. Respondent failed to comply with RMP management requirements including failing to identify a defined on-site person or position that has overall responsibility for the development, implementation, and integration of the risk management program elements at the Facility. Respondent also failed to document through an organizational chart or similar document how responsibility for implementing individual risk management program elements at the Facility would be assigned to additional persons, including failing to document the lines of authority at the Facility.

i. In the 2009 RMP, Respondent listed Edward G. Quinn, from PurEnergy, LLC (Respondent's contractor), as the Emergency Contact at the Facility and as the Plant Manager. Respondent's documents defined Mr. Quinn as the person assigned overall responsibility for implementing the risk management program at the Facility. At the time of the Inspection in 2013, Mr. Quinn remained listed as the Facility's emergency contact in the Facility's Tier 2 chemical inventory reporting submitted in 2013; however, Mr. Quinn was no longer employed at the Facility as of September 2012. Respondent failed to file a correction of the Facility's emergency contact information within one month of Mr. Quinn no longer being the Facility's emergency contact.

ii. The Facility records identified the Facility Plant Manager as being responsible for the risk management program at the Facility, with support from PurEnergy Operating Services. Facility records identified the Facility Plant Manager as Michael Baier.

iii. Facility records stated that dissemination and implementation of safety information, operating procedures, and maintenance procedures was delegated to the Facility's Maintenance Specialist. At the time of the Inspection, the Facility Maintenance Specialist was Michael Rapoza.

iv. At the time of the Inspection, Respondent failed to provide an up-to-date defined on-site person responsible for the implementation of the RMP program elements for the Process or an appropriate organizational chart document that defined the lines of authority over elements of the risk management program at the Facility. After the Inspection, Respondent updated EPA's CDX System to reflect that Michael Baier was responsible for the Facility's RMP implementation and Michael Rapoza was the Facility's emergency contact.

b. Failure to maintain and comply with Process Safety Information requirements of 40 C.F.R. § 68.65. Respondent failed to comply with process safety information requirements, including failure to document that either the equipment complied with RAGAGEP or that existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use was designed, maintained, inspected, tested, and operated in a safe manner. For Respondent's Process, at the time of the Facility's latest PHA, applicable RAGAGEP sources included: Int'l Inst. of Ammonia Refrigeration, Standard 2-2008, with Addendum A: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems (August 4, 2010), [hereinafter "IIAR 2-2008"]; Int'l Inst. of Ammonia Refrigeration, Bulletin No. 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, [hereinafter "IIAR Bull. 109"]; Int'l Inst. of Ammonia Refrigeration, Bulletin No. 110: Guidelines for: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems [hereinafter "IIAR Bull. 110"]; Int'l Inst. of Ammonia Refrigeration, Bulletin No. 114: Guidelines for Identification of Ammonia Refrigeration Piping and System Components, [hereinafter "IIAR Bull. 114"]; and, Am. Nat'l Standards Inst./Am. Soc'y of Heating, Refrigerating and Air-Conditioning Eng'rs, Standard 15-2010: Safety Standard for Refrigeration Systems, [hereinafter "ASHRAE 15-2010"]. In addition, at the time of the Inspection, significant portions of the ammonia refrigeration system at the Facility did not meet these standards. Specifically:

i. The Process at the Facility was not properly identified as an ammonia area. Although employee access doors to the Facility's Ammonia Machinery Room, located in the Facility's Chiller Building, were marked with signs indicating, "danger anhydrous

ammonia," the Ammonia Machinery Room access doors lacked the appropriate NFPA 704 signs indicating the presence of ammonia. Appropriate NFPA 704 signage is the primary visual indicator used by first responders to identify the existence of hazardous materials in an area. Furthermore, the two roll-up garage-type doors to the Machinery Room were completely unlabeled. Finally, the Machinery Room lacked appropriate signage to indicate that only authorized personnel were allowed entry and that eye and ear protection must be worn in the Machinery Room. Standard industry practice is for refrigerating systems to be provided with approved informative signs, charts, and labels, including NFPA 704 and hazards signs, in accordance with the International Mechanical Code. *See e.g.,* IIAR 2-2008, supra, § 13.1.10.4 and Appendix L (Machinery Room Signage).

ii. Numerous portions of the covered process piping and valves were missing the required labels and/or identification tags. In some areas, labels on pipes had faded due to exposure to the elements. The standard industry practice is for all piping to identify the use of the pipe, physical state of the refrigerant, the relative pressure, and the direction of flow. *See e.g.,* IIAR's 2-2008, supra, § 10.6; IIAR Bull. 109, supra, § 4.7.6; and, IIAR Bull. 114, supra, §§ 4.1 and 4.2.

iii. The Facility lacked a manual "on/auto" override switch for the emergency ventilation system outside the designated principle exterior door to the Facility's ammonia machinery room. The standard industry practice is that emergency remote controls for the emergency mechanical ventilation systems should be provided and be located immediately outside the designated principle exterior machinery room door. The function of the emergency remote controls should be clearly marked by signage near the controls. An "on/auto" override

for emergency ventilation should be located immediately outside the designated principle exterior machinery room door. *See* IIAR's 2-2008, supra, § 13.3.11.

iv. An emergency shutdown switch located immediately outside a secondary employee access door to the Ammonia Machinery Room was not labeled to reflect whether or not the switch provided electrical shutdown for the Machinery Room. At the time of the allegations herein, the standard industry practice was that a remote emergency shutdown control for refrigerant compressors, refrigerant pumps, and normally closed automatic refrigerant valves within the machinery room, should be provided immediately outside the designated principle exterior machinery room door. The remote control should be a clearly identified switch of the break glass type or should feature an approved tamper resistant cover, and should provide emergency off only control. *See* IIAR's 2-2008, supra, § 13.1.13.2.

v. The Facility's Ammonia Machinery Room included only one unlabeled ammonia warning alarm beacon located at one access door. At the time of the Inspection, the standard industry practice was for each refrigerating machinery room to contain at least two refrigerant detectors that could actuate an alarm and mechanical ventilation. *See* IIAR's 2-2008, supra, § 13.2. The detectors should activate visual and audible alarms inside the refrigerating machinery room and outside each entrance to the refrigerating machinery room. *See* IIAR's 2-2008, supra, § 13.2.1.2.

c. Failure to perform and/or maintain PHA documents in accordance with 40 C.F.R. § 68.67. The Facility had a PHA program in place, and the last PHAs were performed on June 16, 2011 and on June 22, 2011. Although a PHA was performed, the Facility's operating records did not include any tracking documentation to address the recommendations made in the PHA.

The PHA included a checklist of items for follow-up, but the Facility possessed no documentation of actions taken in response to these PHA recommendations. Additionally, historical records associated with prior PHAs that were performed between 1994 and 2006 were not available during the Inspection. Facility representatives stated that PHAs were performed by an outside contractor. Records were never provided to the EPA inspectors following the Inspection.

d. Failure to establish operating procedures in accordance with 40 C.F.R. §§ 68.69(a)(1)-(a)(4) and 68.69(c). Respondent developed written standard operating procedures to control certain operations of the Process at the Facility, including normal startup, normal shutdown, seasonal layup, and procedures for electricity energizing the Chiller Building, including the Ammonia Machinery Room. Respondent failed to recertify standard operating procedures on an annual basis, including failing to certify annually that the operating procedures were current and accurate and that the procedures had been reviewed as often as necessary. As of the time of the Inspection, Respondent failed to certify operating procedures for the last few previous years. Respondent failed to comply with Program 3 operating procedure requirements, including:

i. The procedures available for review during the Inspection did not address several issues, including: (1) normal operations, (2) emergency shutdown (including the conditions under which emergency shutdown was required, the assignment of emergency shutdown responsibility to qualified operators to ensure that emergency shutdown was executed in a safe and timely manner), (3) emergency operations, and (4) startup following a turnaround or after emergency shutdown.

ii. The Facility's written standard operating procedures did not include the required health and safety information. The properties and hazards of the chemicals used in the Process, such as ammonia, were not included in the written operating procedures. In addition, control measures to be taken if physical contact or airborne exposure occurs were not included in the Facility's written standard operating procedures.

e. Failure to comply with Program 3 training requirements in accordance with 40 C.F.R. § 68.71. At the time of the Inspection, Respondent failed to produce any records documenting initial or refresher training of employees to perform routine maintenance on the Covered Process or detailing what to look for during an inspection of the Process performed by Respondent's employees. At the time of the Inspection, Michael Rapoza was the only operator employed at the Facility. At the time of the Inspection, Respondent possessed no records to document that Rapoza had ever been provided training on the Covered Process. Respondent had no formal documentation or formal written program outlining any Facility-specific operating training. Respondent failed to document in records that each employee involved in operating the Covered Process had received and understood required operations training. Respondent failed to prepare records containing the identity of the employee(s), the date of the training, and the means used to verify that the employee(s) understood the training. Refresher training on the Covered Process is required at a minimum of every three years following initial training.

f. Failure to comply with the mechanical integrity requirements for the Process, in accordance with 40 C.F.R. § 68.73. Respondent failed to establish a program to perform appropriate checks and inspections of the entire Covered Process to ensure that equipment was installed properly and consistent with design specifications and the

manufacturer's instructions and RAGAGEP. Normal day-to-day maintenance and inspection was substantially lacking. Specific issues identified, include:

i. Components of the Covered Process, including sections of piping and system components, had insulation and lagging that were in poor condition, which increases the potential for corrosion related problems. At the time of the Inspection, piping and system components exhibited significant rusting, insulation was damaged or missing, and labels and identifying tags were missing. The standard industry practice is to inspect ammonia piping for damage to insulation, damage to lagging, and for corrosion and to make timely corrective actions. *See e.g.*, IIAR Bull. 109, § 4.7 and IIAR Bull. 110, supra, Appendix G—Typical Schedule for Inspection and Maintenance.

ii. Respondent failed to document the age of Covered Process system components and failed to document when and why any maintenance of the Covered Process was performed.

iii. Respondent had no training documentation of Facility employee(s) and/or the contractors involved in maintaining the on-going integrity of the Covered Process equipment to ensure that all necessary inspection and maintenance activities were performed and documented as mandated by RAGAGEPs and equipment manuals. The failure to establish and implement a written procedure to maintain the on-going integrity of the Covered Process equipment was problematic because while the system was shut down much of the year, the system remained fully charged with ammonia.

iv. A significant portion of the Covered Process was located outdoors and subjected to external environmental conditions, resulting in the deterioration of parts of the Covered Process system.

v. Respondent lacked a written program that established the basis for the frequency of inspections and tests of process equipment to insure consistency with applicable manufacturers' recommendations, good engineering practices, recognized and generally accepted good engineering practices and prior operating experience. Based upon the observations made during the Inspection, Respondent did not assess, correct and/or document actions taken for deficiencies in equipment that were outside acceptable limits as established by RAGAGEPs before further use or in a safe and timely manner to ensure safe operation of the covered system. A significant portion of the ammonia system near the Gas Turbine Inlet Chilling System that had not been recently replaced exhibited substantial signs of disrepair.

g. Respondent failed to comply with Program 3 compliance audit requirements in accordance with 40 C.F.R. § 68.79. Pursuant to 40 C.F.R. § 68.79, Respondent was required to conduct compliance audits at least every three years to verify that procedures and practices at the Facility were in compliance with the requirements of 40 C.F.R. Part 68.

i. At the time of the Inspection, Respondent's representatives described a 2008 audit; however, Respondent could not locate any records regarding a 2008 audit.

ii. At the time of the Inspection, Respondent provided records regarding a PSM audit performed in 2010. Several of the listed attributes included in the 2010 audit records were not marked to indicate that they had been evaluated during the audit. The

2010 audit report did not include a certification statement by Respondent that it had evaluated compliance with the PSM provisions to verify that the procedures and practices developed for the Covered Process were adequate and were being followed.

iii. Facility records indicated that a subsequent RMP audit was performed in November 2011. The 2011 RMP audit included attributes to be audited that were left blank. Respondent could not provide a written report associated with the 2011 audit.

iv. The 2010 and 2011 audits for the Facility did not contain supporting documentation, including information necessary to determine appropriate responses to issues identified or to document completion or resolution of recommendations or corrections of deficiencies. Respondent lacked any formal documentation of any responses or follow through on any audit findings or recommendations.

h. Respondent failed to perform and maintain records of complete incident investigations in accordance with 40 C.F.R. § 68.81. At least two ammonia release incidents occurred at the Facility in 2010, both of which caused injuries and could have resulted in catastrophic ammonia releases. For the two incidents described below, Respondent failed to document comprehensive assessments of how the incidents occurred, what the root causes were, and how Respondent would make administrative and engineering changes to prevent recurrence and future injuries.

i. On April 9, 2010, a Facility technician making routine rounds detected a strong ammonia odor upon opening the door to the Ammonia Machinery Room in the Chiller Building. The technician was taken to a hospital due to shortness of breath and chest pains. The Facility determined the cause of the ammonia release was a failed sight glass on the

liquid level indicator of the Facility's high pressure receiver. Respondent failed to complete incident investigations regarding the April 9, 2010 ammonia release, including: failed to assess why the ammonia detection alarms failed to warn Facility personnel about the release; failed to document why the ammonia detection alarms only started warning about an ammonia release 68 minutes after the initial discovery of the release; and, failed to document and keep records regarding if or how Respondent would investigate the root cause of the failed glass. Finally, Respondent failed to submit information about the release, which resulted in injuries, to the EPA CDX system within six months of the release.

ii. On June 18, 2010, a Facility Operator checking the Chiller Building's Ammonia Machinery Room observed the ammonia detection system signaling an alarm and noticed the minor smell of ammonia. The cause of the ammonia release was determined to be a failed "o"-ring on an oiler cup on the "B" accumulator recycle pump. Respondent failed to investigate or document why the ammonia detection alarms failed to notify the Facility's Control Room about the ammonia release in the Machinery Room. Respondent's investigation failed to recognize the need to tie the ammonia detection alarms in the Chiller Building to alert the Control Room. Respondent could not provide any documentation to indicate if the ammonia detectors at the Facility were calibrated after the June 18, 2010 ammonia release. According to a Facility representative, two Pawtucket fire department responders were taken to the hospital after responding to this ammonia release. However, the Facility's incident report failed to document that first responders were taken to the hospital nor did the report identify the reason the responders required treatment. In addition, a day care center near the Facility was evacuated due to this ammonia release. Respondent failed to submit information

about the release, which resulted in injuries, to the EPA CDX system within six months of the release. Finally, Respondent failed to maintain incident reports for five years.

i. Respondent failed to have an adequate emergency response program, in accordance with 40 C.F.R. §§ 68.90-68.95, 68.160(b)(6), and 68.195(b). Respondent failed to develop and implement an adequate emergency response program. In their RMP submission to the EPA CDX system, Respondent designated the Facility itself as a "first responder" in cases of accidental releases of regulated substances at the Facility. However, based upon the staffing at the Facility, it was not possible for the Facility to be classified as a first responding facility. The Facility's RMP did not reflect the current operating condition of the Facility in that the Facility is essentially unstaffed and that regional HAZMAT personnel must respond to all incidents at the Facility. Respondent did not coordinate with the local emergency response plan regarding the status of the Facility. In addition, Respondent's employees who responded to the April 9, 2010 ammonia release at the Facility did not respond in a safe manner. Respondent's records indicated that four Facility employees entered the Chiller Building during the release; however, Respondent did not document the ammonia levels to which the employees were responding, and the employees wore a lower-level of respiratory protective gear than is required for responding to an ammonia release unless the ammonia levels are documented to be low enough that a decreased level of respiratory protection will not result in hazardous exposure. The responding employees were trained to the Occupational Health and Safety Administration ("OSHA") "Operations" level but not to the stricter Hazardous Materials "Technician" level. In accordance with OSHA emergency responder requirements as set forth at 29 C.F.R. § 1910.120(q), Technician level training is required for responders to respond to ammonia releases aggressively

to approach the point of release to plug, patch, or otherwise stop the release. Respondent failed to update the emergency contact information for the Facility after the departure of Mr. Quinn in September 2012. Updated information must be submitted to the EPA CDX system within thirty days of the change. Finally, Respondent failed to maintain incident reports for five years.

31. After the Inspection, in December 2013, Respondent de-registered the Facility from the RMP Program; removed the anhydrous ammonia from the chiller system; and reduced the aqueous ammonia inventory to below the threshold limit.

IV. VIOLATIONS

Count 1: Failure to comply with RMP management requirements of 40 C.F.R. § 68.15.

32. Complainant realleges and incorporates by reference Paragraphs 1 through 31.

33. Pursuant to 40 C.F.R. § 68.15, the owner or operator of a Program 3 process is required, among other things, to assign a qualified person or position responsible for development, implementation, and integration of the RMP elements. If any of the individual requirements are assigned to anyone other than the person or position just described, those names or positions and lines of authority shall be documented.

34. As described in Paragraph 30(a), above, at the time of the Inspection in 2013, Respondent failed to provide an up-to-date defined on-site person responsible for the implementation of the RMP program elements for the Covered Process or an appropriate organizational chart document that defined the lines of authority over elements of the risk management program at the Facility.

35. Accordingly, Respondent failed to comply with RMP management requirements in violation of 40 C.F.R. § 68.15 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least September 2012, the date Respondent's assigned person with the overall responsibility for the Facility's RMP program, Edward G. Quinn, stopped working at the Facility, to at least August 8, 2013, the date of EPA's Inspection.

Count 2: Failure to Comply with Process Safety Information Requirements

36. Complainant realleges and incorporates by reference paragraphs 1 through 35.

37. Pursuant to 40 C.F.R. § 68.65, the owner or operator of a Program 3 process is required, among other things, to compile written process safety information before completing the PHA, in order to perform an adequate PHA and to enable proper maintenance of process equipment. This includes documenting information pertaining to the hazards of the RMP chemical in the process and information pertaining to the technology and equipment of the process. This compilation of process safety information enables appropriate identification and understanding of hazards posed by regulated substances in the process and the technology and equipment of the process. In addition, the owner or operator must document that equipment complies with RAGAGEP, and that any equipment that was designed according to outdated standards is designed, maintained, and inspected, tested, and operated in a safe manner. 40 C.F.R. § 68.65(d)(2) and (3).

38. As described in Paragraph 30(b) above, Respondent failed to document that the Process equipment complied with applicable RAGAGEP or that any equipment that was designed according to outdated standards is designed, maintained, inspected, tested, and operated in a safe manner.

39. By failing to comply with process safety information requirements, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least June 22, 2011, the date of the PHA, to August 2013, the date of EPA's Inspection.

Count 3: Failure to Perform and/or Maintain PHA Documents

40. Complainant realleges and incorporates by reference paragraphs 1 through 39.

41. Pursuant to 40 C.F.R. § 68.67, the owner or operator of a Program 3 process is required, among other things, to perform an initial PHA on each covered process. The PHA must identify, evaluate and control the hazards involved in the process. The owner or operator must update the PHA every five years and when a major change in the process occurs. Additionally, the owner or operator must establish a system for addressing the recommendations identified in the PHA, including defining a schedule for completing the action items, taking the actions as soon as possible, and documenting the resolution of the recommendations.

42. As described in Paragraph 30(c) above, although a PHA was performed, the Facility's operating records did not include any tracking documentation to address the recommendations made in the PHA. The PHA included a checklist of items for follow-up, but the Facility possessed no documentation of actions taken in response to these PHA recommendations. The effectiveness of the PHA was substantially limited because Respondent did not plan for and complete all of the identified action items associated with the covered Process. Further, Respondent failed to identify and/or correct significant and easily identifiable hazardous conditions.

43. Also, as described in Paragraph 30(i), the PHA did not identify or address the hazard of having no hazardous material response capabilities available near the Facility to respond to a release.

44. By failing to adequately identify, evaluate, and control hazards, Respondent violated 40 C.F.R. § 68.67(c) and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least May 2012, the date the Facility's operational status changed, to August 2013, the date of EPA's Inspection.

Count 4: Failure to Comply with Program 3 Operating Procedures Requirements

45. Complainant realleges and incorporates by reference paragraphs 1 through 44 of this document.

46. Pursuant to 40 C.F.R. § 68.69, the owner or operator of a Program 3 process is required to develop and implement written operating procedures that provide instructions or steps for safely conducting activities associated with the covered process. These operating procedures must address steps for each operating phase, operating limits, safety and health considerations, and safety systems. The owner or operator must make these procedures available to employees involved in the process, keep them up-to-date with current practices, and certify annually that they are current.

47. As described in Paragraph 30(d), at the time of the Inspection, Respondent failed to comply with Program 3 operating procedure requirements, including failing to recertify standard operating procedures on an annual basis. Respondent failed to recertify standard operating procedures on an annual basis, including failing to certify annually that the operating procedures are current and accurate and that the procedures have been reviewed as often as necessary. As of

the time of the Inspection, Respondent failed to certify operating procedures for the last few previous years.

48. By failing to comply with the operating procedures requirements, Respondent violated 40 C.F.R. § 68.69 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least May 2012, the date the Facility's operational status changed, to August 2013, the date of EPA's Inspection.

Count 5: Failure to Comply with Program 3 Training Requirements

49. Complainant realleges and incorporates by reference paragraphs 1 through 48 of this document.

50. Pursuant to 40 C.F.R. § 68.71, the owner or operator of a Program 3 process must train each employee involved in operating the process, provide those employees with refresher training at least every three years, and document such training and the employees' understanding of the training. Training documentation must record the date of the training and the means used to verify that employees understood the training.

51. As described in Paragraph 30(e), at the time of the Inspection, Respondent failed to produce any records documenting initial or refresher training of employees to perform routine maintenance on the Covered Process or detailing what to look for during an inspection of the Process performed by Respondent's employees. Respondent had no formal documentation or formal written program outlining any Facility-specific operating training. Respondent failed to document in records that each employee involved in operating the Covered Process had received and understood required operations training. Respondent failed to prepare records containing the

identity of the employee(s), the date of the training, and the means used to verify that the employee(s) understood the training.

52. By failing to adequately train and record compliance with training requirements, Respondent violated 40 C.F.R. § 68.71 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least May 2012, the date the Facility's operational status changed, to August 2013, the date of EPA's Inspection.

Count 6: Failure to Comply with Mechanical Integrity Requirements for the Covered Process

53. Complainant realleges and incorporates by reference paragraphs 1 through 52 of this document.

54. Pursuant to 40 C.F.R. § 68.73, the owner or operator of a Program 3 process must establish and implement written procedures to maintain the ongoing integrity of certain process equipment and train employees accordingly. The owner or operator must inspect and test the equipment either in accordance with the manufacturer's recommendations and good engineering practices, or more frequently if needed based on prior operating experience. The owner or operator must also document the inspections or tests on process equipment, correct deficiencies, ensure than any new equipment is installed properly, and ensure that maintenance materials and spare parts are suitable for the process application.

55. As described in Paragraph 30(f), at the time of the Inspection, Respondent failed to comply with the mechanical integrity requirements for the Process, including failing to establish a program to perform appropriate checks and inspections of the entire covered Process to ensure

that equipment was installed properly and consistently with design specifications, the manufacturer's instructions, and RAGAGEP, and failing to correct deficiencies in equipment that were outside acceptable limits. Also, after the 2010 ammonia releases, Respondent could not show that the Facility's ammonia detectors were recalibrated.

56. By failing to establish and implement a sufficient mechanical integrity program and by not correcting equipment deficiencies before further use or in a safe and timely manner, Respondent violated 40 C.F.R. § 68.73 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least July 2010, after an ammonia release at the Facility, to August 2013, the date of EPA's Inspection.

Count 7: Failure to Comply with Program 3 Compliance Audit Requirements

57. Complainant realleges and incorporates by reference paragraphs 1 through 56 of this document.

58. Pursuant to 40 C.F.R. § 68.79, the owner or operator of a Program 3 process must evaluate compliance with the provisions of the prevention program at least every three years; document the audit findings; promptly determine and document a response to each of the findings of the audit; document that deficiencies have been corrected; and retain the two most recent compliance reports.

59. As described in Paragraph 30(g), Respondent lacked records for the Facility's 2008 audit, and the 2010 and 2011 audits for the Facility did not contain supporting documentation, including information necessary to determine appropriate responses to issues identified or to document completion or resolution of recommendations or corrections of deficiencies.

Respondent lacked any formal documentation of any responses or follow through on any audit findings or recommendations.

60. By failing to comply with the audit requirements, Respondent violated 40 C.F.R. § 68.79 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least 2008 to August 2013, the date of EPA's Inspection.

Count 8: Failure to Comply with Program 3 Incident Investigation Requirements

61. Complainant realleges and incorporates by reference paragraphs 1 through 60 of this document.

62. Pursuant to 40 C.F.R. § 68.81, the owner or operator of a Program 3 process must investigate each incident which resulted in, or could reasonably have resulted in, a catastrophic release of a regulated substance, such as anhydrous ammonia. The investigation has to be initiated as promptly as possible, but not later than 48 hours after the incident, and the investigation report shall have the date of the incident and the date the investigation began. In addition, the owner or operator shall have a system to promptly address and resolve the incident report findings and recommendations, and must review the investigation report with affected personnel and contractors. Also investigation reports must be retained for five years. Pursuant to 40 C.F.F. § 68.195, the owner or operator shall submit certain information about a release within six months of the release or by the time the RMP is updated under 40 C.F.R. § 68.190, whichever is earlier.

63. As described in Paragraph 30(h), as of the time of the Inspection, Respondent failed to document comprehensive assessments of how two incidents in 2010 occurred, what the root causes were, and how Respondent would make administrative and engineering changes to

prevent recurrence and future injuries at the Facility. Nor did Respondent update the Facility's RMP with updated accident information within six months of the 2010 incidents, as required by 40 C.F.R. § 68.195.

64. By failing to comply with the incident investigation requirements, Respondent violated 40 C.F.R. §§ 68.81 and 68.195 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least April 2010, the date of the first of two ammonia release incidents at the Facility, to August 2013, the date of EPA's Inspection.

Count 9: Failure to Have an Adequate Emergency Response Program

65. Complainant realleges and incorporates by reference paragraphs 1 through 64 of this document.

66. Pursuant to 40 C.F.R. § 68.90, the owner or operator of a Program 3 process must comply with the emergency response program requirements of 40 C.F.R. § 68.95 unless such owner's or operator's employees will not be responding to accidental releases and various other requirements are met, including: (1) for a stationary source with any regulated toxic substance held in a process above the threshold quantity, the stationary source is included in the community emergency response plan developed under 42 U.S.C. 11003; (2) for a stationary source with only regulated flammable substances held in a process above the threshold quantity, the owner or operator has coordinated response actions with the local fire department; and (3) appropriate mechanisms are in place to notify emergency responders when there is a need for a response.

67. As described in Paragraph 30(i), at the time of EPA's Inspection, Respondent had not coordinated with the local fire department regarding the Facility and had not established

appropriate mechanisms to notify emergency responders when there was a need for a response; therefore, 40 C.F.R. § 68.95 applied to Respondent's covered Process at the Facility.

68. Pursuant to 40 C.F.R. § 68.95, the owner or operator of a Program 3 process must develop and implement an emergency response program by: maintaining an emergency response plan; outlining procedures for using, inspecting, testing and maintaining response equipment; training employees on response procedures; and creating procedures to review and update the emergency response plan to reflect current conditions at the Facility and to inform employees accordingly.

69. As described in Paragraph 30(i), Respondent failed to develop and implement an adequate emergency response program for the Process at the Facility. Respondent's Emergency Response Plan and response protocols were not suitable for the Facility in several ways, including, but not limited to: although Respondent listed the Facility as a "first responder" itself, staffing levels at the Facility made it impossible for the Facility to be a "first responder" in cases of accidental releases of regulated substances at the Facility; the Facility's RMP did not reflect the then-current operating condition of the Facility in that the Facility was essentially unstaffed and that regional HAZMAT personnel would have to respond to all incidents at the Facility; Respondent did not coordinate with the local emergency response plan regarding the status of the Facility; the Facility's emergency response program lacked procedures for how appropriately trained emergency responders would respond to an ammonia release at the Facility; and, Respondent failed to update the emergency contact information for the Facility after the departure of Mr. Quinn in September 2012, as required by 40 C.F.R. § 68.195.

70. By failing to develop and implement an adequate emergency response program for the Process at the Facility, Respondent violated 40 C.F.R. §§ 68.90, 68.95, and 68.195, and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least May 2012, the date the Facility's operational status changed, to August 2013, the date of EPA's Inspection.

V. TERMS OF SETTLEMENT

A. General Settlement Provisions

71. The provisions of this CAFO shall apply to and be binding on the Parties, their officers, directors, agents, servants, employees, successors, and assigns.

72. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that the CAFO states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the factual and legal allegations contained herein, consents to the terms of this CAFO.

73. Respondent hereby waives its rights to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its rights to appeal the Final Order.

74. Respondent consents to the issuance of this CAFO hereinafter recited and consent for purposes of settlement and avoidance of further litigation expense to the performance of the compliance actions described below.

B. Compliance

75. Respondent certifies that it is currently operating the Facility in compliance with 40 C.F.R. 68. Respondent further certifies that the Facility has been deregistered from the RMP Program, that there is no longer anhydrous ammonia at the Facility, and that the aqueous

ammonia used for non-refrigeration purposes is not present at the Facility above RMP threshold levels. Respondent also certifies that it has decommissioned the refrigeration system or achieved the following bare minimum safety measures, which EPA has determined should be present at every facility with an ammonia refrigeration system, as specified below:

Identifying Hazards

- Hazard Addressed: Releases or safety deficiencies that stem from a failure to identify hazards in design/operation of system
    - Facility has completed a process hazard analysis or review.

Operating Activities:

- Hazard Addressed: High risk of release from operating or maintenance activity
    - System has self-closing/quick closing valves on oil pots.
    - Facility has written procedures for maintenance and operation activities.
    - Only authorized persons have access to machinery room and the ability to alter safety settings on equipment.

Maintenance/Mechanical Integrity:

- Hazard Addressed: Leaks/releases from maintenance neglect
    - A preventative maintenance program is in place to, among other things, detect and control corrosion, deteriorated vapor barriers, ice buildup, and pipe hammering, and to inspect integrity of equipment/pipe supports.
    - All piping system openings except the relief header are plugged or capped, or valve is locked.
    - Equipment, piping, and emergency shutdown valves are labeled for easy identification, and pressure vessels have legible, accessible nameplates.
    - All atmospheric pressure relief valves have been replaced in the last five years with visible confirmation of accessible pressure relief valves.

Machinery Room and System Design

- Hazard Addressed: Inability to isolate and properly vent releases
    - The System(s) has/have emergency shut-off and ventilation switches outside each machinery room.
    - The machinery room(s) has/have functional, tested, ventilation. Air inlets are positioned to avoid recirculation of exhaust air and ensure sufficient inlet air to replace exhausted air.
    - Documentation exists to show that pressure relief valves that have a common discharge header have adequately sized piping to prevent excessive backpressure on relief valves, or if built prior to 2000, have adequate diameter based on the sum of the relief valve cross sectional areas.

Emergency Actions

- Hazard Addressed: Inability to regain control and reduce release impact
    - Critical shutoff valves are accessible, and a schematic is in place to show responders where to access them.
    - EPCRA Tier II reporting is up to date.

C. Penalty Payment

76. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and 7413(d), as amended, authorize EPA to assess a civil penalty of up to $25,000 per day of violation for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between January 30, 1997 and March 15, 2004 are subject to up to $27,500 per day of violation; violations that occurred between March 15, 2004 and January 12, 2009 are subject to up to $32,500 per day of violation; and violations that occurred between January 13, 2009 and November 2, 2015 are subject to up to $37,500 per day of violation.

77. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted for inflation by the DCIA and 40 C.F.R. Part 19, prescribes a $295,000 penalty limit for violations from January 12, 2009 through December 6, 2013, a penalty limit of $320,000 for violations from December 7, 2013 to November 2, 2015, a penalty limit of $356,312 for violations from November 3, 2015 to January 14, 2017, a penalty limit of $362,141 for violations occurring thereafter, and a twelve-month duration limitation on EPA's authority to initiate an Administrative Penalty Order. However, these limitations may be waived where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty or a longer period of violation is appropriate for an administrative penalty action. EPA and the United States Department of Justice have determined that an administrative penalty action is appropriate in this case.

78. In determining the amount of the CAA penalty to be assessed, EPA took into account the statutory factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e). These factors include the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require.

79. An appropriate penalty was derived pursuant to the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" ("Enforcement Policy") dated June 2012. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case. When calculating penalties under the Enforcement Policy, EPA takes into account the potential for harm for violating a particular Part 68 requirement and the extent of deviation of Respondent's conduct from the particular Part 68 requirement.

80. Pursuant to Sections 113 (d)(2)(B) and (e) of the CAA, 42 U.S.C. § 7413(d)(2)(B) and (e), and taking into account the relevant statutory penalty criteria, the facts alleged in this CAFO, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of one hundred nine thousand three hundred seventy-five dollars ($109,375) for the violations alleged in this matter.

81. Within thirty (30) calendar days of the effective date of this CAFO, Respondent shall make a payment by cashier's or certified check, or by wire transfer, in the amount of $109,375 and shall include the case name and docket number (CAA-01-2017-0004) on the face

of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

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"

In addition, within 24 hours of payment, Respondent shall forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt by first class mail or other delivery service to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100Mail Code ORA18-1
Boston, MA 02109-3912,

with a copy by electronic mail to: Jim Gaffey, at gaffey.jim@epa.gov and to Maximilian Boal, EPA Enforcement Counsel, at boal.maximilian@epa.gov.

82. Collection of Unpaid Civil Penalty: Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay the civil penalty referenced in Paragraph 81 in full, it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys' fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. There are other actions EPA may take if Respondent fails to timely pay: refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33; collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; suspend or revoke

Respondent's licenses or other privileges; or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

83. All penalties, interest, and other charges shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not deductible for purposes of federal, state or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

D. Effect of Consent Agreement and Attached Final Order

84. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

85. By signing this Agreement, all parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other parties' obligations.

86. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

87. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

88. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

89. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to $95,284 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

90. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

91. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

92. EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

93. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in

response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

94. Each party shall bear its own costs and fees in this proceeding including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

95. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed Consent Agreement to Respondent. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

96. Each undersigned representative of the parties certifies that he or she is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

For Respondent:

Jim Pollock
President and Secretary Treasurer
Pawtucket Power Associates, LP

May 19, 2017
Date

For EPA:

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1—New England

05/24/2017
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF Pawtucket Power Associates, LP 181 Concord Street Pawtucket, RI 02860 Respondent.	Docket No. CAA-01-2017-0004

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(c) of EPA's Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with the terms of the above Consent Agreement, effective on the date is filed with the Regional Hearing Clerk.

Date: 5/25/17

Sharon Wells
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region I

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF	
Pawtucket Power Associates, LP	Docket No. CAA-01-2017-0004
	CERTIFICATE OF SERVICE
Respondent.	

I hereby certify that the foregoing Administrative Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and One Copy (Hand-Delivered):
Wanda Santiago, Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, Massachusetts 02109-3912

Copy (certified mail):
Jim Pollock
President and Secretary Treasurer
Pawtucket Power Associates, LP
1210, 715-5th Avenue S.W.
Calgary, Alberta, Canada
T2P 2X6

Dated: May 25, 2017

Maximilian Boal, Enforcement Counsel
U.S. EPA, Region I
5 Post Office Square, Suite 100 (OES04-2)
Boston, Massachusetts 02109-3912