EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Sheryl Rosner (Name of Case Attorney) 4/28/15 (Date)

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

Case Docket Number CAA-01-2015-0003

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:

Precise Packaging, LLC
300 Riggenbach Rd.
Fall River, MA 02720

Total Dollar Amount of Receivable $ 57,361 Due Date: 5/28/15

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 – NEW ENGLAND

IN THE MATTER OF:	)	**Docket No.:**
Precise Packaging, LLC 300 Riggenbach Road Fall River, MA 02720	)	CAA-01-2015-0003
Respondent	)	**CERTIFICATE OF SERVICE**

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

Original and one copy
(hand-delivered):

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

Copy (certified mail, return
receipt requested):

Mary Simmons Mendoza, Esq.
Haynes and Boone, LLP
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Austin, TX 78701-3285

Dated: 4/28/15

Sheryl Rosner, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF Precise Packaging, LLC. 300 Riggenbach Rd. Fall River, MA 02720 Respondent Proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)	Docket No. CAA-01-2015-0003 **CONSENT AGREEMENT AND FINAL ORDER**

CONSENT AGREEMENT

The United States Environmental Protection Agency, Region 1 ("EPA" or "Complainant") and Precise Packaging, LLC ("Precise Packaging" or "Respondent"), consent to the entry of this Consent Agreement and Final Order ("CAFO") 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. PRELIMINARY STATEMENT

1. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d). As more thoroughly discussed in Sections III and IV below, the CAFO resolves the following CAA alleged violations at the Respondent's Fall River, Massachusetts aerosol and non-aerosol product manufacturing and packaging facility ("Facility"):

(a) *Failure to document, implement, or submit a Program 3 Risk Management Plan ("RMP")*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.150;

(b) *Failure to compile process safety information ("PSI") including documentation of compliance with recognized and generally accepted good engineering practices* in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and at 40 C.F.R. § 68.65;

(c) *Failure to properly document, implement, or update a Process Hazard Analysis (PHA)*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.67;

(d) *Failure to have or coordinate an emergency response plan ("ERP")*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. §§ 68.90 and 68.95;

II. APPLICABLE STATUTES AND REGULATIONS

Statutory and Regulatory Authority

2. 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 an RMP.

3. 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 ("Part 68").

4. 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.

5. 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).

6. 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.

7. 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.

8. 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.

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 demonstrates compliance with Part 68 in a summary format. For example, the RMP for a Program 3 process demonstrates compliance with the elements of a Program 3 Risk Management

Program, including 40 C.F.R. § Part 68, Subpart A (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) 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. Compilation of written process safety information ("PSI") enables owners and operators, as well as employees, to identify and understand the hazards associated with the RMP chemicals used or produced in covered processes prior to conducting a Process Hazard Analysis ("PHA"). 40 C.F.R. § 68.65. The PSI regulations require owners or operators of a stationary source subject to Program 3 to, along with other obligations, collect information pertaining to the hazards of chemicals used. 40 C.F.R. § 68.65(b). In addition owners or operators are required to compile information about the equipment used in covered processes, such as design codes and standards employed, as well as information about safety systems to minimize impacts of process failures. 40 C.F.R. § 68.65 (d)(1). The PSI regulations also require owners or operators to document that equipment used in covered processes complies with recognized and generally-accepted good engineering practices ("RAGAGEP"), which reflect industry best practices for safety and mechanical integrity. 40 C.F.R. § 68.65(d)(2).

12. Based, in part, on the PSI compiled under 40 C.F.R. § 68.65, a Program 3 PHA must identify, evaluate, and control the hazards involved in each of the covered processes. 40 C.F.R. § 68.67(a). Along with other obligations, a Program 3 PHA must address: (1) the hazards of the

process, (2) engineering and administrative controls applicable to the hazards, (3) the consequences of failure of those engineering and administrative controls, (4) stationary source siting, and (5) possible safety and health effects of control failure. 40 C.F.R. § 68.67.

13. Forty C.F.R. § 68.69 requires the owner or operator of a covered process to develop and implement written operating procedures to ensure that activities associated with the covered process are conducted safely and consistent with the PSI.

14. Forty C.F.R. § 68.90 requires the owner or operator of a stationary source with regulated substances to have an emergency response plan under § 68.95, unless its employees will not respond to a release and release procedures have been coordinated with the local fire department. Pursuant to 40 C.F.R. § 68.95, ERPs must contain, among other things, (1) procedures for informing the public and local emergency response agencies about accidental releases; (2) documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures to regulated substances; (3) procedures and measures for emergency response after an accidental release of a regulated substance; (4) procedures for use of emergency response equipment and for inspection, testing, and maintenance; (5) training for employees in all relevant procedures; and (6) procedures to review and update the emergency response plan and to ensure employees are informed of changes. The emergency response plan shall be coordinated with the community emergency response plan. 40 C.F.R. § 68.95(c).

15. Owners or operators of a stationary source with a covered 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 the threshold

quantity in a process. 40 C.F.R. § 68.10; see also 40 C.F.R. § 68.190(b) (updated RMPs must be submitted to EPA at least once every five years).

16. Section 112(r)(7)(E) makes it unlawful for any person to operate any stationary source subject to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of the regulations promulgated thereunder. See 42 U.S.C. § 7412(r)(7)(E); see also 40 C.F.R. Pt. 68.

17. 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 after January 12, 2009.

18. EPA and the U.S. Department of Justice have jointly 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

19. Respondent, Precise Packaging, is a privately held limited liability company organized under the laws of Massachusetts with its principal office and manufacturing facility in Fall River, Massachusetts.

20. As a limited liability company, Respondent is a "person" within the meaning of Section 302(e) of the CAA, 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).

21. Respondent is the operator of an aerosol and non-aerosol product manufacturing and packaging facility located at 300 Riggenbach Rd., Fall River, MA 02770 ("the Facility").

22. The Facility, including its chemical storage tanks, is located less than .1 mile from the nearest neighboring commercial/industrial facility. There are several commercial facilities within a 1,000 foot radius of the Facility.

23. The Facility is a building or structure from which an accidental release may occur and is 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.

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

25. Respondent manufacturers and packages into personal-sized containers a number of common cosmetic and home-use fragrance aerosol products using various aerosol propellants, including pure difluoroethane and blended combinations of difluoroethane-isobutane, difluoroethane-propane, and difluoroethane-isobutane-propane.

26. 1,1 Difluoroethane ("DFE") is a flammable, clear, odorless, and colorless gas. It is shipped as a liquefied gas under pressure. It is easily ignited. Its vapors are heavier than air, and a flame can travel back to the source of a leak very easily. Under prolonged exposure to fire or heat the containers may rupture violently and rocket. As a flammable substance, DFE should be kept from open flame and high temperatures. Fire decomposition byproducts include hydrofluoric acid, a highly corrosive and toxic substance.

27. DFE-isobutane is a flammable liquefied gas composed of DFE (see paragraph 26, above) blended with isobutane. Inhalation of high concentrations of the vapor is harmful and may cause heart irregularities, unconsciousness, or death. DFE-isobutane is an odorless, flammable substance and should be kept from open flame and high temperatures. Fire decomposition byproducts include hydrofluoric acid, a highly corrosive and toxic substance. The Material Safety

Data Sheet for this DFE-isobutane mixture recommends evacuating personnel immediately in the event of a fire.

28. DFE-propane is a flammable liquefied gas composed of DFE (see paragraph 26, above) blended with propane. Inhalation of high concentrations of the vapor is harmful and may cause heart irregularities, unconsciousness, or death. DFE-propane is an odorless, flammable substance and should be kept from open flame and high temperatures. Fire decomposition byproducts include hydrofluoric acid, a highly corrosive and toxic substance.

29. DFE, isobutane, and propane are all regulated flammable gases subject to section 112(r) of the CAA, and when held in a covered process in amounts over threshold quantities are subject to Risk Management Plan (RMP) requirements. 42 U.S.C. § 7412(r); 40 C.F.R. § 68.130. See also paragraph (5) supra (identifying substances listed under § 68.130 as "regulated substances" and "RMP chemicals").

30. The threshold quantity for DFE is 10,000 pounds. 40 C.F.R. § 68.130.

31. The threshold quantity for isobutane is 10,000 pounds. Id.

32. The threshold quantity for propane is 10,000 pounds. Id.

33. The threshold quantity for mixtures which contain DFE, isobutane, butane, and/or propane and have a National Fire Protection Association (NFPA) rating of 4, is 10,000 pounds, unless the concentration of the regulated substance is below one percent by weight of the mixture. 40 C.F.R. § 68.115(b)(2). Mixtures or blends of DFE, isobutane, butane, and propane stored at the Facility have an NFPA rating of 4, and the concentration of DFE therein is more than one percent by weight of the mixture.

34. Respondent stores and handles more than the threshold quantity of DFE at the Facility.

35. Respondent stores and handles more than the threshold quantities of DFE-isobutane, DFE-propane, and DFE-isobutane-propane blends/mixture at the Facility.

36. The chemicals referenced in **paragraphs 34 and 35** ("the RMP chemicals") are stored in four co-located above-ground storage tanks ("ASTs") in an outdoor yard at the Facility.

37. The company receives delivery of more than 10,000 lbs of the RMP chemicals at least three times per year.

38. The four co-located ASTs containing more than threshold amounts of the RMP chemicals are, together, a "covered process."

39. Respondent, as the owner and operator of a stationary source with more than the threshold quantity of the RMP chemicals in a covered process, must comply with the RMP requirements set forth in Part 68. More specifically, Respondent's storage and handling of the RMP chemicals are subject to the requirements of Program 3 because (a) the covered process does not meet the eligibility requirements of Program 1, and (b) the process is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119, and (c) the worst-case scenario for a release of each regulated substance is greater than the flammable endpoint of a nearby commercial/industrial and state park public receptors. 40 C.F.R. § 68.10(d); 40 C.F.R. § 68.10(b)(2); 40 C.F.R. § 68.30.

40. Given the hazards associated with handling the RMP chemicals, industry and fire safety professionals have developed recognized and generally accepted good-engineering practices to encourage safe handling of the materials. As more specifically discussed in Count II, below, the RAGAGEP for storage of the regulated substances cited herein include, but are not limited to, the Liquefied Petroleum Gas Code, National Fire Prevention Association (NFPA) Code 58 (2001) (which has been incorporated in the Massachusetts Fire Code); ASME A13.1-2007 (*Scheme for*

the Identification of Piping Systems); Compressed Gases and Cryogenic Fluids Code, NFPA Code 55 (2013); Hazardous Materials Code; state fire codes; and the Material Safety Data Sheets ("MSDS") for DFE, DFE-isobutane mixtures, DFE–butane, and DFE-propane mixtures.

41. On April 1, 2013, EPA conducted an inspection at the Facility to evaluate Respondent's compliance with the requirements of the CAA's risk management program. 42 U.S.C. § 7413(r); 40 C.F.R. Pt. 68.

42. During the inspection, EPA observed four horizontal ASTs (two 2,550 gallon with maximum 16,878 lbs. capacity each and two 1,990 gallon with maximum 7,983 lbs. capacity each) situated in an outdoor Propellant Storage and Transfer Yard ("Tank Yard").

43. EPA noted that aside from a safety diamond label indicating a flammability of 4, the specific hazardous substances contained within the ASTs were not identified by any labeling on the tanks or the exterior fencing surrounding the Tank Yard as recommended by NFPA 58 Section 2.2.6.1 (container marking).

44. The ASTs contained one or more of the chemicals listed in **Paragraphs 34 and 35**, above. Also, facility personnel indicated that each AST did not always contain the same chemical, and that only one person knew (by memory) which chemical was in which AST.

45. During the inspection, representatives of Precise Packaging stated that the gasses, including the propane, butane, and isobutane, were unodorized, but no signage on the ASTs or in the Tank Yard indicated the lack of odorization, as recommended by NFPA 58 Section 2-2.6.5.

46. At the time of the inspection, EPA inspectors observed that the Tank Yard had a 6-foot chain-link fence with plastic sheet screening surrounding it, along with concrete blocks outside the fence on the street side and by the main entrance. There was a paved drive in the Tank Yard that trucks used to fill the ASTs, which were reported to receive deliveries between one and

two times per week. Inspectors observed that Respondent lacked guard posts to prevent vehicle contact or collision at the filling pipes and horizontal tanks. Also, there were no barriers preventing collision with the structure holding the overhead pipes leading from the horizontal tanks to the block house. There was no method observed to prevent vehicle collisions around or near the ASTs as recommended by NFPA 58 Section 3.2.4.2.

47. Throughout the inspection, EPA observed improper labeling for piping; the pipes running from the ASTs into "block houses" were not labeled for flow direction or contents. Similarly, product transfer piping for blended materials in the compounding room lacked any labeling or identification of the pipes' contents. Industry standard practices recommend use of both 1) arrows indicating flow direction and 2) color-coded labels identifying the contents of each pipe and the hazardous characteristics of the contents. See e.g., ASME A13.1-2007 (*"Scheme for the Identification of Piping Systems"*) (establishing common standard for identification of hazardous materials conveyed in piping systems to assist facility personnel and emergency responders).

48. During the April 2013 inspection, EPA asked a representative of Precise Packaging whether the company had a written Process Hazard Analysis ("PHA"). The representative stated that it had been working on an OSHA Process Safety Management ("PSM") program with a PHA for OSHA compliance. Respondent provided an electronic version of the written PHA several days after the inspection (the "2012 PHA").

49. The 2012 PHA's coverage of the ASTs was minimal, and did not analyze the gas tanks (although the 2012 PHA indicates that action items from a previous PHA concerning the tanks were addressed in the 2012 PHA).

50. During the follow-up inspection in November 2013, Respondent stated that it had made no updates or revisions to the PHA sent to EPA in April 2013. Nor was any PHA updated between 1999 and 2012.

51. On January 21, 2014, the company provided the worksheets for a PHA that had been written in 1999 (the "1999 PHA").

52. The 1999 and 2012 PHAs did not identify at least the following hazards posed by the RMP chemicals that were stored in the ASTs and the Tank Yard:

a. Lack of leak detection program: The PHAs designated no program to routinely identify whether valves (which are engineering controls) were functional as required by 40 C.F.R. § 68.67(3)-(4). Moreover, the gasses in the leaks and piping were odorless, so odor would not provide warning of leak, as recommended by NFPA 58 Sections 11.2.1 and 11.2.2, and NFPA 400 Section 21.3.6.5.

b. Lack of protection from traffic: The PHAs did not address the risks from vehicular collision with tanks, fill pipes, or overhead pipes within the fenced area, although all were unprotected. See, for example, NFPA 58 Sections 3.2.4.2 and NFPA 400 Section 21.3.1.8.3.2.

c. Potential for fire or explosion and off-site effects: The PHA did not identify the potential for an explosion or the various dangers that such an explosion could create (such as hydrofluoric acid fall-out from the DFE, or off-site effects from an explosion). See e.g., 40 C.F.R. § 68.67(c)(4); MSDSs and Fire Safety Analysis Manual for LP Gas Storage Facilities, Chapter 7.1; NFPA 400, Chapter 7.

53. Because the 1999 and 2012 PHAs do not identify or evaluate many hazards associated with these RMP chemicals, they also fail to address or recommend controls that might

prevent and/or mitigate an accidental release of these materials. 40 C.F.R. § 68.67(a), (c), and (e) (PHA must address controls and establish system for implementing recommendations).

54. During the inspection, EPA requested, but Precise Manufacturing failed to produce, written operating procedures that provide clear instructions for safely conducting activities involved in each covered process as required by 40 C.F.R. § 68.69(a)(2)-(4).

55. During the inspection, EPA also asked Respondent whether it had a written emergency response plan ("ERP"). Respondent stated that it did not have a formal ERP, but put forth an emergency evacuation plan ("EEP") that it believed could serve as an ERP. Subsequent to the investigation, EPA obtained and reviewed the EEP. Like the PHA, the EEP fails to specifically identify the RMP chemicals or the hazards they pose. The EEP does not address the potential for explosion or the release of hydrogen fluoride as a combustion byproduct, and contains no mention of the ASTs. Part of the evacuation procedure in the event of an explosion or large fire calls for employees to evacuate to an assembly point in the parking lot, approximately 100 feet from the Tank Yard area. However, the 2008 Emergency Response Guidebook (a document commonly used by emergency responders) instructing on releases of DFE recommends evacuees move at least 800 meters downwind in the event of a spill and 1600 meters in the event of fire. Finally, the EEP does not identify facilities within area impacted by the worst case scenario for a vapor cloud explosion. See e.g., Fire Safety Analysis Manual for LP-Gas Storage Facility Section 7-1.

56. Because the EEP was silent on the RMP substance hazards, it lacked (1) procedures for informing the public and local emergency response agencies about accidental releases; (2) documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures to regulated substances; (3) procedures and measures for emergency response after an accidental release of a regulated substance; (4) procedures for use of emergency response

equipment and for its inspection, testing, and maintenance; (5) training for employees in all relevant procedures; and (6) procedures to review and update the emergency response plan and to ensure employees are informed of changes. 40 C.F.R. § 68.95(a)(1)-(4). The emergency response plan shall be coordinated with the community emergency response plan. See 40 C.F.R. §§ 68.90, 68.95. Pursuant to 40 C.F.R. § 68.95(a)(1), all such information must be contained in the emergency response plan itself in order to be readily available to facility personnel and emergency responders the event of an accidental release of a regulated substance.

57. Respondent stated that it had coordinated with the local fire department (see 40 C.F.R. § 68.90(b)) and therefore was not required to comply with 40 C.F.R. § 68.95. However, the fire department informed EPA that coordination was not adequate. Coordination has improved since the inspections.

58. On October 10, 2013, OSHA issued a citation for various PSM violations.

59. As a result of EPA's observations and review of documents, EPA alleges that Respondent violated several requirements of 40 C.F.R. Part 68. On April 17, 2014, EPA issued a Finding of Violation. On May 14, 2014, the parties met to discuss the Finding of Violation. During that meeting, Respondent responded to the Finding of Violation and provided photographic evidence that several alleged violations had been corrected. Respondent also committed to address other alleged violations in an Administrative Order on Consent, which was issued on July 2, 2014. EPA's finding of violations, as modified to reflect information received at the May 14, 2014 meeting, are as follows:

IV. VIOLATIONS

COUNT 1: Failure to Document, Implement, or Submit a Program 3 Risk Management Plan

60. Complainant realleges and incorporates by reference **paragraphs 1 through 59** of this document.

61. As discussed in **paragraph 9**, under 40 C.F.R. §§ 68.12(a) and 68.150, the owner or operator of a stationary source with a covered process subject to Program 3 must submit a single Risk Management Plan ("RMP") for all covered processes.

62. At all times relevant to this Consent Agreement, Respondent's storage and handling of DFE in a process over threshold quantities at the Facility subjected it to Program 3 RMP requirements. See supra **paragraphs 26-39**.

63. Respondent's storage and handling of DFE mixture with propane, butane, and isobutane in a process over threshold quantities at the Facility subjected it to Program 3 RMP requirements. See supra **paragraphs 26-39**.

64. Respondent is subject to OSHA Process Safety Management (PSM) requirements. As required under OSHA, Respondent started drafting a Process Safety Management (PSM) program in 2012.

65. The worst-case scenario for a release of 10,000 lbs. or more of DFE at 1 psi is 0.1 miles, which is greater than the flammable endpoints of nearby commercial industrial and state park public receptors.

66. The worst-case scenario for a release of 10,000 lbs. of isobutane and the isobutane mixtures at 1 psi is 0.2 miles, which is greater than the flammable endpoints of nearby commercial/industrial and state park public receptors.

67. The worst-case scenario for a release of 10,000 lbs. of propane and propane mixtures at 1 psi is 0.2 miles, which is greater than the flammable endpoints of nearby commercial/industrial and state park public receptors.

68. Respondent has used RMP chemicals in amounts exceeding threshold quantities since at least 2009.

69. Respondent submitted an RMP on June 27, 2013 (although EPA had continuing concerns about the company's underlying program to prevent and respond to releases).

70. Respondent failed to submit a Program 3 RMP until at least four years after it first exceeded RMP thresholds.

71. Respondent failed to submit a Program 3 RMP for any covered processes from at least 2009 until June 27, 2013.

72. Accordingly, Complainant alleges that Respondent violated 40 C.F.R. §§ 68.12 and 68.150.

COUNT II: Failure to Compile Process Safety Information

73. Complainant realleges and incorporates by reference paragraphs **1 through 72** of this document.

74. As discussed in **paragraph 11** above, under 40 C.F.R. § 68.65, an owner or operator of a covered process must compile written process safety information ("PSI") for RMP chemicals in order to understand the hazards posed by those processes and substances. PSI shall include information pertaining to (1) the hazards of the regulated substances in the process, (2) the technology of the process, (3) the equipment of the process, and (4) the recognized and generally accepted good engineering practices ("RAGAGEP") used in the process. 40 C.F.R. § 68.65(b)-(d).

Pursuant to 40 C.F.R. § 68.65(d)(2), an owner or operator of a covered process must also document that its process complies with RAGAGEP.

75. Respondent failed to document PSI. At the time of the inspections on April 2013 and November 2013 there was no written PSI review.

76. Respondent failed to document and confirm its processes complied with RAGAGEP. 40 C.F.R. § 68.65(d)(2). As referenced in **paragraph 40**, above, the RAGAGEP for ASTs and the Tank Yard include, among others, NFPA 58 Liquefied Petroleum Gas Code; NFPA 55 Compressed Gasses and Cryogenic Fluids Code; NFPA 400 Hazardous Materials Code; ASME A13.1-2007 *Scheme for the Identification of Piping Systems*; and the MSDS for the chemicals. Respondent failed to document its RAGAGEP.

77. Respondent also did not comply with the following RAGAGEP:

a. The Facility lacked guard posts to prevent vehicle contact or collision at the filling pipes and horizontal tanks. Also, there were no barriers preventing collision with the structure holding the overhead pipes leading from the horizontal tanks to the block house. No method prevented vehicle collisions around or near the tanks. See, for example, NFPA 58, Section 3.2.4.2; NFPA 1 Section 60.5.1.9.1 and 60.5.1.9.2; NFPA 400 Section 21.3.1.8.3;

b. The Facility failed to properly label the contents of tanks containing flammable gasses. See, for example, NFPA 58 Section 2.2.6.1; NFPA 1 Section 60.5.1.8.2.1; NFPA 400 Section 21.3.1.7;

c. The Facility failed to properly label each tank of flammable "unodorized" liquefied petroleum gas. See e.g., NFPA 58 Section 2.2.6.5 and;

d. The Facility failed to properly label the piping containing flammable gasses and label the direction of flow. See e.g., ASME A13.1-2007 *Scheme for the Identification of Piping Systems* and NFPA 400 Section 21.3.1.7.4.1.

78. Respondent documented on May 14, 2014 that it had fixed most of these issues.

79. Therefore, Complainant alleges that Respondent violated 40 C.F.R. § 68.65 from at least January 22, 2009 to May 14, 2014.

COUNT III – Failure to Properly Document, Implement, or Update a Process Hazard Analysis

80. Complainant realleges and incorporates by reference **paragraphs 1 through 79** of this document.

81. As discussed in **paragraph 12** above, under 40 C.F.R. § 68.67, an owner or operator of a covered process shall perform an initial process hazard analysis ("PHA") for RMP chemicals. Among other things, a Program 3 PHA must address: (1) the hazards of the process, (2) engineering and administrative controls applicable to the hazards, (3) the consequences of failure of those engineering and administrative controls, (4) stationary source siting, and (5) possible safety and health effects of control failure. 40 C.F.R. § 68.67(c). PHAs must be updated at least every five years. 40 C.F.R. § 68.67(f).

82. Respondent's 1999 and 2012 PHAs were incomplete. The 2012 PHA only briefly mentioned the ASTs, and as described more fully in **paragraph 49-52**, Respondent failed to meet many elements of a compliant PHA. For example, the PHAs did not address the hazards posed by the RMP chemicals in the ASTs, such as an explosion or the release of hydrogen fluoride as a combustion byproduct. Nor did the PHAs address the dangers associated with an off-site release,

the risks of vehicle collision, or the lack of a program to routinely identify valve failure or leaks. In addition, the PHAs were not updated between 1999 and 2012.

83. Respondent failed to document, implement, or update many elements of a PHA for RMP chemicals. Accordingly, Complainant alleges that Respondent violated 40 C.F.R. § 68.67 from at least January 22, 2009 to the present.

COUNT IV – Failure to Have or Coordinate an Emergency Response Plan

84. Complainant realleges and incorporates by reference **paragraphs 1 through 83** of this document.

85. Forty C.F.R. § 68.90 requires the owner or operator of a stationary source with regulated flammable substances to have an emergency response plan under § 68.95, unless its employees will not respond to a release, and response procedures have been coordinated with the local fire department. Under 40 C.F.R. § 68.95, emergency response plans, among other things, must contain, (1) procedures for informing the public and local emergency response agencies about accidental releases; (2) documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures to regulated substances; (3) procedures and measures for emergency response after an accidental release of a regulated substance; (4) procedures for use of emergency response equipment and for inspection, testing, and maintenance; (5) training for employees in all relevant procedures; and (6) procedures to review and update emergency response plan and to ensure employees are informed of changes. Also, the emergency response plan shall be coordinated with community emergency response plan. 40 C.F.R. § 68.95(c).

86. Respondent's protocols at the time of the EPA inspections required Respondent employees to call 911 in the event of the release of a regulated substance.

87. As of the dates of the EPA inspections, Respondent could not provide any written documentation of coordination with the local fire department or emergency responders or document an emergency response plan. Nor did the Fire Department believe that the company had coordinated emergency response with it.

88. Therefore, Respondent failed to coordinate with the fire department under 40 C.F.R. § 68.90(b)(2).

89. Given that Respondent had not adequately coordinated with the fire department, the company was required to have an emergency response plan under 40 C.F.R. § 68.95.

90. The EEP prepared by Respondent calls for an Emergency Coordinator to "make emergency calls to the Fire Department and outside help [to] give information concerning the location or the fire status, chemicals involved and what personnel rescue efforts are needed." It does not, however, contain any specific procedures for informing local emergency planning and response organizations of accidental releases of RMP substances. 40 C.F.R. § 68.95(a)(1)(i).

91. The EEP does not document proper first-aid and emergency medical treatment necessary to treat accidental human exposures. 40 C.F.R. § 68.95(a)(1)(ii).

92. The EEP does not contain adequate procedures and measures for an emergency response after an accidental release of a regulated substance. 40 C.F.R. § 68.95(a)(1)(iii). The procedures it did have would have put evacuees in harm's way of an explosion or release of hydrogen fluoride, a combustible byproduct.

93. The EEP does not itself contain procedures for the inspection, testing, and maintenance of emergency response equipment. 40 C.F.R. § 68.95(a)(1)(iii)(2).

94. The EEP provides for employee training in emergency plan procedures. However, it states that training "*may* include use of Self Contained Breathing Apparatus ("SCBA")." The

MSDS for DFE, isobutane, and propane clearly state that a SCBA is necessary if containers rupture and contents are released under fire conditions.

95. The EEP does not contain procedures to review and update the emergency response plan and to ensure employees are informed of changes. 40 C.F.R. § 68.95(a)(4).

96. Accordingly, Complainant alleges that Respondent has violated 40 C.F.R. §§ 68.90 and 68.95 from at least January 22, 2009 to the present.

V. TERMS OF SETTLEMENT

97. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors, and assigns.

98. 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, consents to the terms of this CAFO.

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

100. Respondent admits the jurisdictional allegations made by EPA, neither admits nor denies the other factual or legal determinations made by the EPA, and reserves all rights and defenses it may have regarding liability or responsibility for conditions at the Facility, with the exception of its right to contest EPA's jurisdiction to issue or enforce this CAFO and its right to contest the terms of this CAFO. Respondent has entered into this CAFO in good faith without trial or adjudication of any issue of fact or law.

101. Respondent certifies that it is currently upgrading the Facility and its RMP program to be in compliance with Section 112(r)(7) of CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68. Many of the alleged violations have been addressed, and an Administrative Order on Consent ("AOC"), dated July 2, 2014 and issued pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), requires Respondent to address the remaining alleged violations. The Director of EPA Region 1's Office of Environmental Stewardship has extended the December 30, 2014 deadline by which work must be completed under the AOC to April 30, 2015, and pursuant to Section 113(a)(4), the AOC must terminate within a year of issuance (i.e., by July 2, 2015). If, by July 2, 2015, Respondent has not completed all work required under the AOC, the parties may seek approval from the Regional Judicial Officer to amend this CAFO to include compliance requirements.

102. In accordance with Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), EPA has compromised the maximum civil penalty of $37,500 per day per violation authorized in this matter by applying the penalty factors set forth in CAA Section 113(e)(i) and the relevant penalty policy[1] to the facts and circumstances of this case. Such circumstances include Respondent's cooperation in agreeing to perform the non-penalty obligations set forth in **paragraph 101** and the Supplemental Environmental Project requirements contained in **paragraphs 105-107** below. Accordingly, pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(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 $57,369 for the violations alleged in this matter.

[1] Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012)

103. Respondent consents to the issuance of this CAFO and to the payment of the civil penalty cited in **paragraph 102**.

104. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a company, bank, cashier's, or certified check in the amount of $57,369 payable to the order of the "Treasurer, United States of America," and referencing the EPA Docket Number of this action (CAA-01-2015-0003). The check should be forwarded to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

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

and

Sheryl Rosner, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA-17
Boston, MA 02109-3912

VI. DISPUTE RESOLUTION

A. Informal Dispute Resolution

105. The parties shall use their best efforts to resolve all disputes informally. If the dispute is resolved through informal dispute resolution, the resolution shall be reduced to writing, signed by representatives of each party, and incorporated into this CAFO, and any requirements or schedules therein shall become enforceable requirements of this CAFO. If, however, disputes arise concerning this CAFO which the parties are otherwise unable to resolve, the parties shall utilize the procedures set forth in Subsection B, "Formal Dispute Resolution," below. Unless otherwise agreed to by EPA and Respondent, the informal dispute resolution period may not last longer than thirty (30) days from the day that the issue in dispute is raised unless the parties use alternative dispute resolution as provided in Paragraph 106 of this subsection during informal dispute resolution, in which case the informal dispute resolution period may last no longer than seventy (70) days.

106. Use of Alternative Dispute Resolution During Informal Dispute Resolution: The following procedures apply to the use of alternative dispute resolution (ADR) during informal dispute resolution:

a. Initiation of ADR: During informal dispute resolution, either Respondent or EPA may propose the use of a mediator mutually agreeable to both parties, and may request, at the requesting party's sole discretion in the event the dispute involves a technical question, that such mediator be a qualified engineer or other trained and licensed technical consultant with expertise relevant and applicable to the nature of the dispute, to assist in resolving the dispute. In addition, upon the request of Respondent or EPA, a meeting shall take place between the parties to the dispute

with the assistance of a mediator for the purpose of resolving the dispute and/or determining whether to undertake further mediated discussions. Neither party may propose any mediators with whom they have any past, present, or planned future business relationships, other than primarily for mediation activities. Once both parties agree to the use of a mediator, the period for resolving any informal dispute using ADR (the "ADR Period") shall not exceed thirty (30) days. The initial meeting with a mediator shall take place within fifteen (15) days of the party's request, unless the parties agree to extend that period. If the parties use ADR but cannot resolve the dispute, formal dispute resolution, as governed by the procedures set forth in Subsection B, "Formal Dispute Resolution," below, shall commence immediately upon the termination of the ADR period.

b. Decision to Continue ADR: After the initial mediated meeting, the decision to continue the mediation shall be in the sole discretion of each party.

c. Costs of ADR: The parties agree that they will share equitably the costs of mediation, subject to the availability of EPA funds for this purpose. EPA's ability to share the costs of mediation will be determined by EPA in its sole discretion and shall not be subject to dispute resolution or judicial review. If EPA determines that no mediation funding is available, Respondent shall have the option to cover all of the mediation costs or to request the services of a trained mediator from EPA's in-house ADR program or any other dispute resolution professional whose services may be available to the parties at no cost.

d. Confidentiality: The parties agree that participants in mediated discussions pursuant to this Section, including the mediator, shall execute a confidentiality agreement, the form for which shall be mutually agreed upon by the parties.

e. Agreement: If the dispute is resolved through ADR, the resolution shall be reduced to writing, signed by both parties, and incorporated into the CAFO, and any requirements or schedules therein shall become enforceable under the CAFO.

B. Formal Dispute Resolution

107. In the event that the parties cannot resolve a dispute by informal negotiations under either Paragraph 105 or 106 of Subsection A, "Informal Dispute Resolution," the position advanced by EPA shall be considered binding unless Respondent invoke the formal dispute resolution procedures as outlined below:

a. Initiation of formal dispute resolution: If Respondent disagrees, in whole or in part with any written decision ("Initial Written Decision") by EPA pursuant to this CAFO, except those decisions that are not subject to review, Respondent shall submit to EPA a formal notice of objection to EPA's Initial Written Decision. The notice of objection must contain the bases for Respondent's objection, including but not limited to any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Respondent. Respondent must submit the notice of objection within, ten (10) days after the termination of the informal ADR period.

b. Formal dispute resolution period: After EPA receives Respondent's notice of objection, the parties shall then have an additional ten (10) days from EPA's receipt of Respondent's objection to attempt to resolve the dispute. During this period, Respondent may request a meeting with the Director of the Office of Environmental Stewardship, EPA Region 1 in order to make a written and/or oral presentation of its position and may bring to that meeting, at Respondent's sole discretion, a qualified engineer or other trained and licensed technical consultant with expertise relevant and applicable to the nature of the dispute, to assist Respondent in presenting the basis for its objections with regard to any technical dispute. If agreement is reached, the resolution shall be reduced to writing, signed by representatives of each party, and incorporated into this CAFO, and any requirements or schedules therein shall become enforceable requirements of this CAFO.

c. EPA Dispute Decision: If EPA and Respondent are unable to reach agreement within the period specified in Paragraph 3.b. above, the Director of the Office of Environmental Stewardship shall notify Respondent, in writing, of his or her decision and the bases for that decision within seven (7) days (hereinafter referred to as the "Dispute Decision.") Such decision shall be final and incorporated into this CAFO. Any requirements or schedules therein shall become enforceable requirements of this CAFO.

d. Use of ADR: The parties may, upon mutual consent, use ADR during the formal dispute resolution period.

108. Except as provided in Section VII, "Stipulated Penalties," the existence of a dispute under this section VI.B. and EPA's consideration of matters placed into dispute under section VI.B. shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this CAFO during the pendency of the dispute resolution process, unless the nature of the dispute involves the technical feasibility of the compliance obligation.

109. Within seven (7) days after either (a) reaching a dispute resolution agreement under Subsection A of this section or (b) receiving EPA's Dispute Decision under Paragraph 107.c. of this subsection, Respondent shall notify EPA that it has commenced work to comply with the requirements of the agreement or decision. In the event that Respondent fails or refuse to comply, EPA may take such enforcement actions as are authorized by law. Except as expressly waived in this Order, Respondent reserves all rights, remedies and defenses it may have under law or in equity against such enforcement actions.

110. EPA may extend the time periods established in this Section upon notice to Respondent.

VII. FORCE MAJEURE AND EXCUSABLE DELAY

111. Force majeure, for purposes of this CAFO, is defined as any event arising from causes not foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this CAFO. Force majeure does not include increased costs of the work to be undertaken under this CAFO, financial inability to complete the work, work stoppages or other labor disputes. Force majeure does include weather events and other changes in the condition of the natural environment that could impact the work, the acts of

unrelated third parties (including without limitation the failure of suppliers to fulfill timely placed orders) that interfere with Respondent's ability to perform, acts of God, war, riot, terrorism, or compliance with any law or governmental order or court order, rule, or directions.

112. If Respondent wishes to claim a force majeure event, then within 5 days of learning of the potential for delay, Respondent must notify EPA of the potential for delay and within 15 days provide EPA in writing all relevant information relating to the delay, including all actions taken or to be taken to prevent or minimize the delay and a proposed revised schedule. Respondent shall include with any notice all available documentation supporting its claim. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

113. If EPA determines that a delay or anticipated delay is attributable to a force majeure event, EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as EPA determines is necessary to complete the obligation.

114. If EPA disagrees with Respondent's assertion of a force majeure event, EPA will notify Respondent in writing, and Respondent may elect to invoke the dispute resolution provision. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

Supplemental Environmental Project ("SEP")

115. Respondent shall complete the Supplemental Environmental Project ("SEP" or "Project") as described in Attachment 1, which the parties agree is intended to secure significant environmental and public health protection and benefits. The SEP requires purchasing equipment for the Fall River Fire Department that will enhance the Fire Department's ability to respond to and prepare for emergencies involving hazardous chemicals.

116. Respondent shall satisfactorily complete the SEP according to the requirements and schedule set forth in Attachment 1, which is incorporated herein by reference and is enforceable by this CAFO. The SEP is projected to cost approximately $147,000. Except as otherwise specified on page 5, item 8 of Attachment 1, "satisfactory completion" means (a) purchasing the required equipment within one year of the effective date of this CAFO; (b) ensuring that the equipment is in working order according to manufacturer instructions at the time of its delivery to the Fall River Fire Department; (c) purchase training classes for the Fall River Fire Department as specified in Attachment 1; and (d) spending approximately $147,000 to purchase the equipment.

117. **SEP Completion Report**. Respondent shall submit a SEP Completion Report within 30 days of completion of the SEP. The SEP Completion Report shall contain the following information: (i) a detailed description of the SEP as implemented; (ii) a list of itemized costs for implementing the SEP; and (iii) a certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this CAFO and in accordance with Attachment 1.

118. Respondent agrees that failure to submit the report required by **paragraph 117** shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to **paragraph 121** below.

119. Respondent shall submit all notices, submissions, and reports required by this CAFO to Sheryl Rosner by e-mail at rosner.sheryl@epa.gov, to Chris Rascher by e-mail at rascher.chris@epa.gov, and by First Class mail or any other commercial delivery service to EPA at the addresses set forth below:

Sheryl Rosner, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA-17
Boston, MA 02109-3912

and

Chris Rascher, Environmental Engineer
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES05-1
Boston, MA 02109-3912

Submission will be deemed to be made upon tendering the delivery to a commercial delivery service for overnight delivery or upon the date of the postmark in the event of use by First Class mail.

120. After receipt of the SEP Completion Report described in **paragraph 117** above, EPA will notify Respondent in writing:

a. That EPA concludes that the SEP has been completed satisfactorily;

b. That EPA has determined that the project has not been completed satisfactorily and is specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or

c. That EPA has determined that the SEP does not comply with the terms of this CAFO and is seeking stipulated penalties in accordance with **paragraph 121** herein.

If EPA notifies Respondent pursuant to subparagraph (b) above that the SEP itself or the SEP Completion Report does not comply with the requirements of this CAFO, Respondent shall make such corrections to the SEP and/or modify the SEP Completion Report in accordance with the schedule specified by EPA. If EPA notifies Respondent that the SEP itself does not comply with the requirements of this CAFO, Respondent shall pay stipulated penalties to EPA in accordance with **paragraph 121** herein.

121. Stipulated Penalties.

a. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of $200 for each day that Respondent is late.

ii. For a SEP or any portion thereof that has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States of the dollar value of the portion of the SEP not satisfactorily completed times 1.25, plus interest from the effective date of the CAFO. The definition of "satisfactory completion" is set out in **paragraph 116**. However, subject to the provision of page 6, item 8 of Attachment 1, if Respondent spends less than $147,000 but otherwise satisfactorily completes the SEP, Respondent shall only be required to pay a stipulated penalty to the United States in the amount equal to the difference between $147,000 and the actual amount spent on the Project.

b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in sole discretion of EPA.

c. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of **paragraph 104**. Interest and late charges shall be paid as stated in **paragraph 125**.

e. Payment of stipulated penalties shall be in addition to any other relief available under federal law.

f. EPA may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO.

122. Respondent certifies that, as of the date of this CAFO, Respondent is not required to perform the SEP by any federal, state or local law or regulation, nor is Respondent required to perform the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

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

the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

124. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act."

125. **Collection of Unpaid Stipulated Penalties for SEP**: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that stipulated penalty relating to the performance of SEPs pursuant to **paragraphs 121,** above, is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

126. **Collection of Unpaid CAA Civil Penalty**: Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay CAA penalty 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. Moreover, 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.

127. All civil and stipulated penalties, interest, and other charges shall represent penalties assessed by EPA, and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.62-21 of the Internal Revenue Code, 26 U.S.C. § 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.

128. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

129. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 113(a) and (d) of the CAA for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced

pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

130. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

131. Nothing in this CAFO is intended to resolve any criminal liability of the Respondent, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

132. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, completed all compliance obligations, performed the SEP(s), paid any stipulated penalties, and submitted the documentation required by the CAFO.

133. 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.

134. The terms, conditions, and requirements of this CAFO may not be modified without the written agreement of both parties and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements modifying the compliance or SEP schedules described in paragraphs 105 through 111 and **Attachment 1**.

135. 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.

136. Each undersigned representative of the parties certifies that he 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:

Shaun Gaus, President and
Chief Executive Officer
Precise Packaging LLC.

3/19/2015
Date

For Complainant:

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

03/26/15
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF:	
Precise Packaging, LLC 300 Riggenbach Road Fall River, MA Respondent.	EPA Docket No. CAA-01-2015-0003

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Settling Party, as specified in the Consent Agreement, is ORDERED to comply with all terms of the Consent Agreement, effective on the date on which it is filed with the Regional Hearing Clerk.

SO ORDERED THIS 27th DAY OF APRIL 2015

LeAnn Jensen
Acting Regional Judicial Officer

ATTACHMENT 1 – Supplemental Environmental Project
Precise Packaging, LLC
CAA-01-2015-0003

Precise Packaging, LLC shall perform this Supplemental Environmental Projects as a component of its settlement with EPA.

BACKGROUND

The City of Fall River is an industrial community on the banks of the Taunton River with a population of approximately 89,000. According to 2010 and 2013 census information,[1] the per capita income for the city is approximately $21,000. About 23% of the population is below the poverty line, including 36% of those under age 18. The City has limited financial resources.

In addition to protecting a large population, Fall River's emergency responders protect some sensitive natural resources. Those resources include two large lakes along with a large portion of protected woodlands on the eastern part of the city, with the Quequechan River draining out of the ponds and flowing 2.5 miles through the heart of the city, emptying out an estimated 26 million gallons a day into the deep Mount Hope Bay/ Taunton River estuary in the western part of the city.

Precise Packing LLC, located at 300 Riggenbach Rd. in Fall River, MA is in an industrial district along with the following four other RMP facilities: Blount Fine Foods, Inc, ISP Freetown Fine Chemicals, Inc. (in Freetown), Borden & Remington Corp, and the Fall River Water Filtration Plant. The district covering Precise Packaging also includes: Interstate 1-95, Route 24, Route 79, the Mass Coastal Railway, the Three Mile River, Quequechan River, Taunton River, North Watuppa Pond (drinking water), and Copicut Reservoir (reserve drinking water). Given the cluster of RMP facilities, transportation corridors, and sensitive waterways, this district has the most hazardous materials response challenges in Fall River. In sum, Fall River has limited financial resources and a high number of chemical facilities and sensitive areas, so improving the City's ability to respond to chemical emergencies has a very strong nexus to this enforcement action.

SCOPE OF WORK

The SEP will provide Fall River's emergency response personnel with appropriate emergency response equipment, as described below. Precise Packaging shall purchase and provide to the Fall River Fire Department the following specialized emergency response equipment within one year of the effective date of the CAFO. Precise Packaging shall also confirm that the equipment is in working order according to manufacturer instructions at the time

[1] http://quickfacts.census.gov/qfd/states/25/2523000.html

of its delivery to the Fall River Fire Department and purchase training classes for the Fall River Fire Department as specified below.

Precise Packaging Equipment Purchasing Summary Table

Category	*Item #*	*Quantity and description of equipment*	*Cost*
Decon equipment	1	(2) Portable Decon Showers	$5,660.00 Total ($2,830.00 per unit plus shipping)
	2	1 Firefighter Turnout Gear Washing Machine	$3,263.67
	3	1 Firefighter Turnout Gear Dryer	$6,141.00
Mobile command and associated emergency chemical response equipment	4	(1) Notebook Computer (for emergency planning)	$1,283.91 Total
	5	(2) Mobile Computers (for field command use)	$21,106.76 Total (10,553.38 per unit)
	6	(4) computer tablets (for field command use)	$12,717.52 Total ($3,179.38 per unit)
	7	Command Vehicle – large SUV (Car 2) (including Emergency equipment and 2-way radios)	$51,998.94
	8	"ER Equipment" to outfit Command Vehicle (Car 3)	$8,118.94 Total
Chemical Emergency Response Gear	9	(2) MultiRae Pro Meters	$12,200.00 Total ($6,100.00 per unit)
	10	(2) ToxiRea Pro Meters - Ammonia	$884.00 Total ($442.00 per unit)
	11	(2) ToxiRea Pro Meters-Chlorine	$884.00 Total ($442.00 per unit)
	12	(1) 5-Year Meter Service & Training Contract	$17,500.00 Total
	13	(50) Tychem Suits XL	$504.50 Total ($10.09 per unit)
	14	Firefighter Accountability System	$2,067.00 Total
	15	(1) I am Responding Software	$3,300.00 Total
Total Costs			**$147,625**

Decontamination Equipment

1. **2 Portable Decontamination Showers** – These single stall shows will be deployed in smaller hazardous materials incident situations. These allow the department to provide for decontamination of individuals and allow a faster set up than larger decontamination facilities which are not practical for a small response.
   (2) Portable Decon Showers: $5,660.00 Total ($2,830.00 per unit)
   • *Single-Stall PVC Shower System: $4,960.00 ($2,480.00 per unit)*
   • *Shipping: $700.00 ($350.00 per unit)*

2. **Firefighter turnout gear washing machine and dryer** – The washing machine and dryer will be deployed at one of the six fire stations (in the district with the most RMP facilities) to provide response personnel with capability to safely clean emergency response turnout gear. During response activities, turnout gear become impacted with hazardous materials and, even in regular fire response, with incidental exposure to hazardous materials as well as to hazardous by-products of combustion. These machines allow for the removal of these materials while extending the lifespan of the turnout gear. FRFD currently does not have any capability to clean gear and oftentimes firefighters wash contaminated gear in their home washing machines.

   1 Firefighter Turnout Gear Washing Machines (for decon): $3,263.67
   Washer: $2,522.00
   Fixed Elevation Base $325.00
   Shipping: $116.67 Setup: $300.00

3. ***1 Firefighter Turnout Gear Dryer** (for decon): $6,141.00*
   Turnout Gear Dryer $5,841.00
   Shipping: $300.00

Mobile command and associated emergency chemical response equipment

4. **1 Notebook Computer for emergency planning** – This notebook will replace the department's currently outdated notebook computer used by the departments emergency planner. The current notebook computer will not use the most current version of CAMEO and the department is unable to review electronic Tier II information through the current notebook computer.
   (1) Notebook Computer (for emergency planning): $1,283.91 Total
   Computer: $1,222.97
   Tax: $60.94

5. **2 Mobile Computers** – These two mobile computers would be used in both Car 2 and Car 3 Command Vehicles. The computers enhance hazardous materials response capabilities and increase firefighter safety in hazardous materials response situations by allowing field access to hazardous materials information stored in the department's mainframe computer.

This information includes a chemical database, building information, facility information and pictures, fire inspection reports and history of past incidents at facilities.

(2) Mobile Computers (for field command use): $21,106.76 Total (10,553.38 per unit)
Perform Mobile System
(1) Fire & EMS Message Server 1-5 Users: $1,250.00
(3) Mobile / Fire Field Based Reporting Clients: $3,750.00 ($1,250.00 per unit)
(1) Mobile Fire/EMS Train-the-Trainer Up to 12: $1,200.00
Third Party Products and/or Services
(3) Pervasive Workgroup Licenses: $195.00 ($65.00 per unit)
5-Year Annual Maintenance Fee(s)
(1) Fire & EMS Message Server 1-5 Users: $1,125.00 ($225.00 per year)
(1) Mobile / Fire Field Based Reporting Clients: $3,375.00 ($675.00 per year)
Training
- *(1) 2-Day Training Course: $2,400.00*

Hardware
- *(2) Toughbook Computers: $7,274.26 ($3,637.13 per unit)*
- *(2) 3-Year Protection Plans: $500.00 ($250.00 per unit)*
- *Shipping: $37.50 ($18.75 per unit)*

6. **Four tablet computers for field command use** – These tablets would be used for the three command vehicles plus a fourth for the department's lieutenant who coordinates the departments emergency and hazardous materials response planning and responds to all hazardous materials incidents if the Chief is unavailable. The tablets will allow field access to numerous databases and programs critical to hazardous materials response including WISER (for the modeling of plumes from releases), CAMEO (a chemical database) and Google Maps (providing enhanced "birds eye" views of RMP facilities and areas surrounding hazardous materials incidents to allow for a more targeted incident response).

   (4) tablet computers (for field command use): $12,717.52 Total ($3,179.38 per unit)
   Tablet computer 64gb: $2,519.96 ($629.99 per unit)
   Life Proof Case: $599.96 ($149.99 per unit)
   5-year Mobile Broadband 4G – 5 GB Allowance
   (Soft Cap): $9,597.60 ($2,399.40 per unit)

7. **Command Vehicle Car 2 for District 1** – The 2015 full size sport utility vehicle will serve as a command vehicle for the district encompassing the Precise Packaging facility, although it could also be used to respond in other areas. The vehicle will be a fully equipped emergency response vehicle to respond to hazardous materials incidents. The vehicle will replace an approximately 10 year old vehicle and will enhance the department's ability to respond to hazardous materials incidents, serving as a command center and equipped with hazardous response equipment including much of the equipment described here. The Fall River Fire Department command vehicles respond to all structure fires and hazardous material incidents throughout the City of Fall River. The current command vehicles are too small and are not adequately equipped to be used as a Mobile Incident Command Post at the scene of these emergencies. Also the age and mileage of

these vehicles are nearing the end of their useful life as reliable emergency response vehicles and break downs are occurring more frequently.

Command Vehicle): $51,998.94 Total
• 2015 large SUV: $36,127.00
Additional Equipment
• Front Center Console: $400.00
• Emergency Equipment (Lights and Siren): $6,175.00
• Command Cabinet: $3,500.00
• Equipment Storage Cabinet: $3,500.00
• Lettering and Striping: $900.00
• Mobile 2-Way Radio (for center console): $559.47
• Mobile 2-Way Radio (for command cabinet): $559.47
• (2) Maglite with Chargers: $278.00 ($139.00 per unit)

8. **Hazardous Materials Response Equipment for Command Vehicle Car 3 (for District 2)** – Equipment would be purchased for a second command vehicle, equipping this vehicle for enhanced response to hazardous materials incidents. This equipment would include a command cabinet, an equipment storage cabinet and emergency mobile 2-way radio communication. This purchase would be contingent upon the department purchasing a new vehicle within one year. The district covered by this car includes Interstate 1-95, Taunton River, South Watuppa Pond, Cook Pond, and Sawdy Pond. Further, the potential impacts of a hazardous materials incident at Borden & Remington Corp. or the Water Treatment RMP facilities could extend into the district covered by Car 3. In addition, this vehicle would serve as a backup for Car 2.
   (1) Command Vehicle (Car 3) "Equipment Only": $8,118.94 Total
   Additional Equipment
   Command Cabinet: $3,500.00 Equipment Storage Cabinet: $3,500.00
   Manufacture Dealer
   • Mobile 2-Way Radio (for center console): $559.47
   • Mobile 2-Way Radio (for command cabinet): $559.47

   Given that Respondent's ability to purchase this equipment is entirely dependent on the City's ability to buy a new command vehicle for District 2, Respondent may "satisfactorily complete" its SEP obligations without expending the $8,119 for this vehicle's emergency response equipment. If it is not possible to purchase this equipment, Respondent shall pay the amount attributable to this SEP item ($8,119) to the U.S. Treasury as a stipulated penalty. See CAFO, paragraph 111.a.ii.

Chemical Emergency Response Gear

9. **2 MultiRae Pro Meters** – These meters would be in Car 2 and Car 3 command vehicles. These meters allow for field readings of air issues in the event of hazardous materials incidents, including O2/LEL/CO/H2S/Gamma/PID. This greatly enhances the department's hazardous materials response capabilities and allows the department to

further enhance the safety of department personnel and the public during an incident response by providing real time data on releases of hazardous materials.
(2) MultiRae Pro Meters: $12,200.00 Total ($6,100.00 per unit)
MultiRae Pro – 02/LEL/CO/H2S/Gamma/PID Meter

10. **2 ToxiRea Pro Meters/Ammonia** – These meters would be in Car 2 and Car 3 command vehicles. These meters allow for field readings ammonia concentrations. Ammonia is in use in significant quantities at Borden & Remington Corp., an RMP facility. This greatly enhances the department's hazardous materials response capabilities and allows the department to further enhance the safety of department personnel and the public during an incident response by providing real time data on releases of hazardous materials.
ToxiRea Pro Meters: $884.00 Total ($442.00 per unit)
ToxiRea Pro Monitor (PGM-1860) – Ammonia Meter

11. **2 ToxiRea Pro Meters/Chlorine** – These meters would be in Car 2 and Car 3 command vehicles. These meters allow for field readings chlorine concentrations. Chlorine is in use in significant quantities at Borden & Remington Corp. and Fall River Water Filtration Plant, both RMP facilities. This greatly enhances the department's hazardous materials response capabilities and allows the department to further enhance the safety of department personnel and the public during an incident response by providing real time data on releases of hazardous materials.
(2) ToxiRea Pro Meters: $884.00 Total ($442.00 per unit)
ToxiRea Pro – Chlorine Meter

12. **Service contract for items 9, 10 and 11**– The meters in items 9, 10 and 11 are being obtained from a local vendor. Accurate readings on these meters is essential to safe and effective hazardous materials response. A five year service contract is proposed by the vendor, including quarterly calibration, replacement of any broken parts and sensors as needed and on site training of department personnel on the use of the meters in hazardous materials situations.
(1) 5-Year Meter Service & Training Contract: $17,500.00 Total

13. **50 Tychem Suits** – These suits will be deployed with each first response vehicle. This allows those first responders who encounter hazardous materials to take protection against typical first response exposures to hazardous materials.
(50) Tychem Suits XL: $504.50 Total ($10.09 per unit)

14. **Firefighter accountability system** – The accountability system is a tagging system tied to status boards in the command vehicles allowing command personnel to track department personnel responding to hazardous material incidents, including a tracking of who is in what area of a response location.
(5) Firefighter Accountability System: $2,067.00 Total
Custom Built Unit

15. **"I am Responding" Software system** – This system will allow the department recall hazardous material emergency response personnel through an automated system that will

place the calls upon command from department leaders and track the responses of personnel. This will enhance the department's ability to respond to hazardous materials incidents quickly.

(5) I am Responding Software (for recall of personnel): $3,300.00 Total
5-Year Subscription: $3,250.00 ($650.00 per year)
Set-up Fee: $50.00

An added benefit of this Supplemental Environmental Project is that Respondent plans to purchase some of the above equipment from local vendors.