U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
PLAZE, INC.,	)	**Docket No.** CAA-07-2017-0454
	)	
Respondent.	)	
	)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Plaze, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

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

4. Respondent is Plaze, Inc., a corporation in good standing under the laws of the state of Delaware doing business in the state of Missouri, which owns and operates an aerosol packaging facility located at 105 Bolte Lane in St. Clair, Missouri (Respondent's Facility).

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

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

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

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

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

10. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations. The Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, and implementing regulations at 40 C.F.R. Part 19, adjusted this amount so that penalties of up to $37,500 per day are now authorized for violations of CAA § 112(r)(7) that occurred from January 12, 2009, through November 2, 2015, and penalties of up to $45,268 per day are authorized for violations that occur after November 2, 2015.

11. Pursuant to Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), and 40 C.F.R. § 22.18(b), the Administrator may "compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection."

Definitions

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

13. The regulations at 40 C.F.R. § 68.3 define "stationary source," in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

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

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

16. The regulations at 40 C.F.R. § 68.3 define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

General Factual Allegations

17. Respondent is, and at all times referred to herein was, a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. Respondent's Facility is a "stationary source" pursuant to 40 C.F.R. § 68.3.

19. Propane, butane, diflouroethane, methyl ether, and isobutane (collectively referred to as "regulated flammables") are "regulated substances" pursuant to 40 C.F.R. § 68.3. The threshold quantity for propane, butane, diflouroethane, methyl ether, and isobutane, as listed in 40 C.F.R. § 68.130, is ten thousand (10,000) pounds each.

20. Pursuant to 40 C.F.R. § 68.115(b)(2), subject to exceptions not applicable here, "if the concentration of the substance is one percent or greater by weight of the mixture, then, for purposes of determining whether a threshold quantity is present at the stationary source, the entire weight of the mixture shall be treated as the regulated substance."

21. On or about July 12-13, 2016, representatives of the EPA conducted an inspection (EPA inspection) of Respondent's Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

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

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

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

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

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

27. Information gathered during and after the EPA inspection revealed that Respondent had greater than 10,000 pounds of a flammable mixture containing one percent or greater quantities of propane and/or butane in a process at its facility in its finished goods warehouse.

28. Because Respondent has onsite greater than 10,000 pounds of regulated flammables in a process, and/or greater than 10,000 pounds of a flammable mixture containing one percent or greater quantities of propane and/or butane in a process, Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

29. Because Respondent has onsite greater than 10,000 pounds of regulated flammables in a process, and/or greater than 10,000 pounds of a flammable mixture containing

one percent or greater quantities of propane and/or butane in a process, Respondent is subject to Program 3 prevention program requirements because, pursuant to 40 C.F.R. § 68.10(d), the covered process at its facility did not meet the eligibility requirements of Program 1 and is in North American Industry Classification System as code 325998.

30. Because Respondent has onsite greater than 10,000 pounds of regulated flammables in a process, and/or greater than 10,000 pounds of a flammable mixture containing one percent or greater quantities of propane and/or butane in a process, Respondent is required under Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 requirements provided at 40 C.F.R. § 68.12(d).

Allegations of Violation

31. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1

32. The facts stated in Paragraphs 17 through 30 above are herein incorporated.

33. The regulation at 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to submit a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185. Pursuant to 40 C.F.R. § 68.160, the owner or operator shall complete a single registration form that provides, *inter alia*, the Program level of each covered process and whether the stationary source is subject to 29 C.F.R. § 1910.119. Additionally, pursuant 40 C.F.R. § 68.175(a), the owner or operator is required to provide the information identified at 40 C.F.R. § 68.175(b) through (p) for each Program 3 process.

34. The EPA inspection revealed that Respondent, although having submitted an RMP for covered processes at its facility, did not include all regulated processes in its RMP pursuant to the requirements of 40 C.F.R. §§ 68.150 to 68.185, as required by 40 C.F.R. § 68.12(a). Specifically, Respondent had not included its finished goods warehouse, which contained over 10,000 pounds of a flammable mixture containing one percent or greater quantities of propane and/or butane, as a covered process in its RMP submission.

35. Respondent's failure to include its finished goods warehouse in its RMP pursuant to the requirements of 40 C.F.R. §§ 68.150 to 68.185, as required by 40 C.F.R. § 68.12(a), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2

36. The facts stated in Paragraphs 17 through 30 above are herein incorporated.

37. The regulation at 40 C.F.R. § 68.12(d)(2) requires the owner or operator of a stationary source with a process subject to Program 3 to conduct a hazard assessment as provided in 40 C.F.R. § 68.20 through 68.42.

38. The regulation at 40 C.F.R. § 68.30(a) requires the owner or operator of a stationary source with a process subject to Program 3 to estimate in the RMP the population within a circle with its center at the point of a potential release and radius determined by the distance to the endpoint defined in § 68.22(a).

39. The EPA inspection revealed that Respondent did not base its population estimates with distance to endpoints centered on the point of release, as required by 40 C.F.R. § 68.30(a).

40. The regulation at 40 C.F.R. § 68.30(c) requires the owner or operator of a stationary source with a process subject to Program 3 to use the most updated Census data, or other updated information, to estimate the population potentially affected.

41. The EPA inspection revealed that Respondent did not use the most current Census or other updated information to estimate the population potentially affected, as required by 40 C.F.R. § 68.30(c).

42. Respondent's failure to follow the provisions of 40 C.F.R. § 68.30 described above, as required by 40 C.F.R. § 68.12(d)(2), are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

43. The facts stated in Paragraphs 17 through 30 above are herein incorporated.

44. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. § 68.65 through 68.87.

45. The regulation at 40 C.F.R. § 68.65(c)(1)(v) requires the owner or operator of a stationary source with a process subject to Program 3 to evaluate consequences of deviation as part of its process safety information.

46. The EPA inspection revealed that Respondent did not fully evaluate consequences of deviation as part of its process safety information, as required by 40 C.F.R. § 68.65(c)(1)(v).

47. The regulation at 40 C.F.R. § 68.65(d)(1)(iii) requires the owner or operator of a stationary source with a process subject to Program 3 to provide electrical classification as part of its process safety information.

48. The EPA inspection revealed that Respondent did not provide an electrical classification drawing, as required by 40 C.F.R. § 68.65(d)(1)(iii).

49. The regulation at 40 C.F.R. § 68.65(c)(1)(iii) requires the owner or operator of a stationary source with a process subject to Program 3 to compile a maximum intended inventory as part of its process safety information.

50. The EPA inspection revealed that Respondent did not include its finished goods warehouse, which contained over 10,000 pounds of a flammable mixture containing one percent or greater quantities of propane and/or butane, in its maximum intended inventory, as required by 40 C.F.R. § 68.65(c)(1)(iii). The EPA inspection further revealed that Respondent used the annual throughput for the maximum intended inventory rather than maximum intended inventory at any one time, as required by 40 C.F.R. § 68.65(c)(1)(iii).

51. Respondent's failure to follow the provisions of 40 C.F.R. §§ 68.65 described above, as required by 40 C.F.R. § 68.12(d)(3), are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4

52. The facts stated in Paragraphs 17 through 30 above are herein incorporated.

53. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. § 68.65 through 68.87.

54. The regulation at 40 C.F.R. § 68.67(e) requires, among other things, the owner or operator of a stationary source with a process subject to Program 3 to assure that the findings and recommendations of the process hazard analysis team are resolved in a timely manner and to develop a written schedule of when actions to address the findings and recommendations of the process hazard analysis team are to be completed.

55. The EPA inspection revealed that Respondent did not clearly track its process hazard analysis recommendations and did not develop a written schedule for completion, as required by 40 C.F.R. § 68.67(e).

56. Respondent's failure to follow the provisions of 40 C.F.R. § 68.67(e) described above, as required by 40 C.F.R. § 68.12(d)(3), are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5

57. The facts stated in Paragraphs 17 through 30 above are herein incorporated.

58. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. § 68.65 through 68.87.

59. The regulation at 40 C.F.R. § 68.69(a)(1) requires, among other things, the owner or operator of a stationary source with a process subject to Program 3 to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address emergency shutdowns including conditions under which emergency shutdowns are required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdowns are executed in a safe and timely manner.

60. The EPA inspection revealed that Respondent's written operating procedures did not address emergency shutdown procedures, as required by 40 C.F.R. § 68.69(a)(1).

61. The regulation at 40 C.F.R. § 68.69(a)(2)(i) requires, among other things, the owner or operator of a stationary source with a process subject to Program 3 to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address operating limits, including consequences of deviation.

62. The EPA inspection revealed that Respondent's written procedures did not address consequences of deviation, as required by 40 C.F.R. § 68.69(a)(2)(i).

63. The regulation at 40 C.F.R. § 68.69(c) requires, among other things, the owner or operator of a stationary source with a process subject to Program 3 to certify annually that operating procedures are current and accurate.

64. The EPA inspection revealed that Respondent did not certify annually all operating procedures as being current and accurate.

65. Respondent's failure to follow the provisions of 40 C.F.R. § 68.69 described above, as required by 40 C.F.R. § 68.12(d)(3), are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 6

66. The facts stated in Paragraphs 17 through 30 above are herein incorporated.

67. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. § 68.65 through 68.87.

68. The regulation at 40 C.F.R. § 68.73(b) requires the owner or operator of a stationary source with a process subject to Program 3 to establish and implement written procedures to maintain the ongoing integrity of process equipment.

69. The EPA inspection revealed that Respondent failed to establish and implement written maintenance, inspection, and/or testing schedules for some critical process equipment, as required by 40 C.F.R. § 68.73(b).

70. The regulations at 40 C.F.R. § 68.73(d)(2)-(3) and (e) require the owner or operator of a stationary source with a process subject to Program 3 to follow recognized and generally accepted good engineering practices with regarding to performing inspections and tests on process equipment; to conduct inspections of process equipment consistent with applicable manufacturers' recommendations and good engineering practices; and to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

71. The EPA inspection revealed that Respondent failed to provide documentation, as required by 40 C.F.R. § 68.73(d)(2)-(3) and (e), that: hose assemblies were inspected in accordance with the NFPA 58 section 7.2.4.2 and 7.2.4.3 or the 10-year replacement history of flexible connections section 9.4.3.7; certain excess flow valves were checked annual or on a regular basis pursuant to instruction manuals; an MSA gas detection monitor was calibrated regularly and that calibration adjustments were logged pursuant to the instruction manual; and two items noted on building 1 and 2 Gas Tank Farm Monthly Checklists dated July 7, 2016 as requiring attention, were resolved.

72. Respondent's failure to follow the provisions of 40 C.F.R. § 68.73 described above, as required by 40 C.F.R. § 68.12(d)(3), are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 7

73. The facts stated in Paragraphs 17 through 30 above are herein incorporated.

74. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. § 68.65 through 68.87.

75. The regulation at 40 C.F.R. § 68.75(a) requires the owner or operator of a stationary source with a process subject to Program 3 to establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process.

76. The regulation at 40 C.F.R. § 68.75(c) requires the owner or operator of a stationary source with a process subject to Program 3 to inform and train any involved employees of any changes.

77. The regulation at 40 C.F.R. § 68.75(d) requires the owner or operator of a stationary source with a process subject to Program 3 to update process safety information.

78. The EPA inspection revealed that Respondent, did not fully follow the management of change provisions in its documentation for the 2016 management of change SR019, and did not change the process safety information when the tank was installed, as required by 40 C.F.R. § 68.75(a), (c), and (d). The EPA inspection further revealed that Respondent failed to conduct training regarding this management of change for affected personnel training, as required by 40 C.F.R. § 68.75(c).

79. Respondent's failure to follow the provisions of 40 C.F.R. § 68.75 described above, as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 8

80. The facts stated in Paragraphs 17 through 30 above are herein incorporated.

81. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. § 68.65 through 68.87.

82. The regulations at 40 C.F.R. § 68.79(a) and (b) require the owner or operator of a stationary source with a process subject to Program 3 to certify that they have evaluated compliance with the Subpart D-Program 3 Prevention Program at least every three years and that such compliance audit shall be conducted by at least one person knowledgeable in the process.

83. The regulations at 40 C.F.R. § 68.79(d) and (e) require the owner or operator of a stationary source with a process subject to Program 3 to promptly determine and document an appropriate response to each of the findings of the audit, to document that the deficiencies have been corrected, and to retain the two most recent compliance audit reports.

84. The EPA inspection revealed that Respondent had not conducted the required audit in the three years preceding January 2016, as required by 40 C.F.R. § 68.79(a). The EPA inspection further revealed that the January 2016 audit did not fully satisfy all elements pertaining to certification, PHA tracking, and employee participation plan elements, as required by 40 C.F.R. § 68.79(b), (d) and (e).

85. Respondent's failure to follow the provisions of 40 C.F.R. § 68.79 described above, as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 9

86. The facts stated in Paragraphs 17 through 30 above are herein incorporated.

87. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. § 68.65 through 68.87.

88. The regulations at 40 C.F.R. § 68.87(b)(1) and (2) require the owner or operator of a stationary source with a process subject to Program 3, when selecting a contractor, to obtain and evaluate information regarding the contract owner or operator's safety performance and programs and to inform the contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

89. The EPA inspection revealed that Respondent was unable to provide documentation of compliance with 40 C.F.R. § 68.87(b)(1) and (2) and its own policies for one contractor.

90. Respondent's failure to follow the provisions of 40 C.F.R. § 68.87 described above, as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 10

91. The facts stated in Paragraphs 17 through 30 above are herein incorporated.

92. The regulation at 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source with a process subject to Program 3 to submit a single RMP, as provided in 40 C.F.R. § 68.150 through 68.85.

93. The regulation at 40 C.F.R. § 68.155(f) requires the owner or operator of a stationary source with a process subject to Program 3 to address planned changes to improve safety in the Executive Summary of the RMP submittal.

94. The EPA inspection revealed that Respondent did not address planned changes to improve safety in the Executive Summary of its 2016 RMP submittal, as required by 40 C.F.R. § 68.155(f).

95. The regulation at 40 C.F.R. § 68.180 requires the owner or operator of a stationary source with a process subject to Program 3 to indicate its emergency response program in the RMP submittal.

96. The EPA inspection revealed that Respondent did not indicate in its 2016 RMP submittal that it will rely upon 911 emergency responders in the case of an emergency, as required by 40 C.F.R. § 68.180.

97. The regulation at 40 C.F.R. § 68.190(b)(1) requires the owner or operator of a stationary source with a process subject to Program 3 to update the RMP every five (5) years.

98. Respondent submitted an RMP on October 14, 2009, but then did not submit an updated RMP until more than five (5) years thereafter, on July 8, 2016.

99. Respondent's failures to follow the provisions of 40 C.F.R. § 68.155 and 40 C.F.R. § 68.180 described above, as required by 40 C.F.R. § 68.12(a), and failure to follow the provisions of 40 C.F.R. § 68.190, are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

100. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

(a) admits the jurisdictional allegations set forth herein;

(b) neither admits nor denies the specific allegations stated herein;

(c) consents to the assessment of a civil penalty, as stated herein;

(d) consents to the issuance of any specified compliance or corrective action order;

(e) consents to any conditions specified herein;

(f) consents to any stated Permit Action;

(g) waives any right to contest the allegations set forth herein; and

(h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

101. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and to completion of the Supplemental Environmental Projects (SEPs) described below.

102. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

103. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Twenty-Eight Thousand Five Hundred Ninety Dollars ($28,590) and

shall perform the two SEPs as set forth in this Consent Agreement and Final Order. The SEPs are further described below.

104. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at *http://www.epa.gov/financial/makepayment.*

105. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

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

Britt Bieri, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

106. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Supplemental Environmental Projects

107. In response to the violations of the CAA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by the CAA or any other federal, state, or local law, Respondent shall complete the SEPs described in this Consent

Agreement and Final Order, which the parties agree are intended to secure significant environmental or public health protection and improvement.

108. Respondent shall complete each of the following SEPs, which are designed to assist in proactively identifying and preventing an accidental release of a flammable substance from Respondent's facility along with mitigating and minimizing the consequence of such accidental release and the attendant benefits to emergency planning and preparedness:

(a) installation of a water cannon fire suppression system with fire hydrants and monitor nozzles with 1,250 gallons per minute rating placed to protect flammables in or near the propellant tank farm area (SEP No. 1); and

(b) installation of an open path infrared flammable gas detection sensor system around the propellant tank farm with two visual and audible alarms, and an automatic dialer (SEP No. 2).

109. The proposal and description for SEP No. 1 is attached hereto as Appendix A and incorporated herein in its entirety. The proposal and description for SEP No. 2 is attached hereto as Appendix B and incorporated herein in its entirety. SEP No. 1 and SEP No. 2 shall collectively cost at least One Hundred Twenty Thousand Five Hundred Dollars ($120,500). Respondent in good faith estimates that the cost to implement SEP No. 1 is Forty Thousand Dollars ($40,000). Respondent in good faith estimates that the cost to implement SEP No. 2 is Eighty Thousand Five Hundred Dollars ($80,500). Respondent agrees that both SEPs shall be completed within 6 months of the Effective Date of this Consent Agreement and Final Order.

110. These SEPs shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

111. Within 7 months of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit a SEP Completion Report covering both SEPs to the EPA contact identified in Paragraph 114 below. Each SEP Completion Report shall contain the following information:

(a) Detailed description of the SEP as implemented;

(b) Description of any problems encountered in implementation of the project and the solution thereto;

(c) Description of the specific environmental and/or public health benefits resulting from implementation of the SEP and to the extent feasible, quantify the benefits associated with the SEP and provide a report setting forth how the benefits were measures or estimated; and

(d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

112. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

113. The SEP Completion Report shall include the statement of Respondent, through an authorized representative, signed and certifying under penalty of law the following:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

114. The SEP Completion Report shall be submitted on or before the due date specified above to:

> Dave Hensley, AWMD/CORP
> U.S. Environmental Protection Agency, Region 7
> 11201 Renner Boulevard
> Lenexa, Kansas 66219.

115. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEPs under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order 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 to enforce federal laws.

116. With regard to the SEPs, Respondent certifies the truth and accuracy of each of the following:

(a) That all cost information provided to the EPA in connection with the EPA's approval of SEP No. 1 is complete and accurate and that Respondent in good faith estimates that the cost to implement SEP No. 1 is Forty Thousand Dollars ($40,000);

(b) That all cost information provided to the EPA in connection with the EPA's approval of SEP No. 2 is complete and accurate and that Respondent in good faith estimates that the cost to implement SEP No. 2

is Eighty Thousand Five Hundred Dollars ($80,500);

(c) That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop either SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

(d) That neither SEP No. 1 nor Sep No. 2 is a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;

(e) That Respondent has not received and will not receive credit for either SEP in any other enforcement action;

(f) That Respondent will not receive reimbursement for any portion of either SEP from another person or entity;

(g) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing either SEP; and

(h) Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as either SEP described in Paragraph 108.

117. Stipulated penalties for failure to complete SEPs/Failure to spend agreed-on amount.

(a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEPs above, and/or to the extent that the actual expenditures for the SEPs do not equal or exceed the cost of the SEPs described in this Consent Agreement and Final Order, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i. If SEP No. 1 and SEP No. 2 have not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of One Hundred Twenty Thousand Five Hundred Dollars ($120,500), minus any documented expenditures determined by EPA to be acceptable for the SEPs.

ii. If SEP No. 1 and SEP No. 2 are completed in accordance with this Consent Agreement and Final Order, but Respondent spent less

than the proposed cost of One Hundred Twenty Thousand Five Hundred Dollars ($120,500) in an aggregate amount on both SEP No. 1 and SEP No. 2 combined, Respondent shall pay a stipulated penalty to the United States which equals the difference between the proposed SEPs and the actual cost of implementing SEP No. 1 and SEP No. 2.

iii. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty, in the amount of $250 for each day, after the report was originally due until the report is submitted.

(b) The determinations of whether each SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement each SEP shall be in the 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 or other resolution under this Consent Agreement and Final Order.

(d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 106 herein.

(e) Nothing in this agreement 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 agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

(f) The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Effect of Settlement and Reservation of Rights

118. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

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

120. Respondent certifies by the signing of this Consent Agreement that, to the best of its knowledge and belief, it is presently in compliance with all requirements of the CAA and its implementing regulations.

121. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

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

General Provisions

123. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

124. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

126. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:
PLAZE, INC.

Date: 9/28/17

Gary Myers
Signature

GARY MYERS
Name

EHS DIRECTOR
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10/11/17

for Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7

Date: 10/11/17

Britt Bieri
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Oct. 11, 2017
Date

APPENDIX A
SUPPLEMENTAL ENVIRONMENTAL PROJECT – SCOPE OF WORK
SEP NO. 1 – WATER CANNON FIRE SUPPRESSION SYSTEM

In satisfaction of its obligations under this Consent Agreement and Final Order (CAFO), Plaze, Inc. (Respondent) will complete the following supplemental environmental project (SEP). A SEP is a beneficial environmental project that Respondent has voluntarily agreed to undertake as part of the resolution and settlement of this matter, but one which the Respondent is not otherwise legally required to perform and that primarily benefits public health or the environment. EPA has approved the following SEP, in addition to the civil penalty set forth in this CAFO, for the settlement of this matter.

1. The SEP described in this Scope of Work is designed to assist in mitigating and minimizing the consequence of an accidental release of a flammable substance from Respondent's facility and the attendant benefits to emergency planning and preparedness.

2. The SEP will involve the design and installation of a water cannon fire suppression system at Respondent's propane tank farm.

3. In particular, the work will involve the installation of two water cannons with monitors and nozzles attached to fire hydrants. Installation will involve excavation and backfill of a water line from the existing city main. The water cannons will be installed in two separate locations on either side of the tank farm to provide suppression coverage throughout the tank farm.

4. The water cannon monitors will be FP10649 Series Industrial Monitors manufactured by Fire Pro Nozzles and Monitors with a flow rating of up to 1,250 gallons per minute (GPM), or an equivalent thereto.

5. The water cannon nozzles will be FP10848-BC Master Stream Nozzles manufactured by Fire Pro Nozzles and Monitors with a flow rating of up to 1,250 GM, or an equivalent thereto.

6. Within one-hundred and eighty (180) days from the effective date of this CAFO, Respondent agrees that it will have completed installation of the water cannon fire suppression system at the tank farm.

7. Within seven months from the effective date of this CAFO, Respondent agrees that it will submit to EPA a SEP Completion Report, which includes all elements required by the CAFO.

APPENDIX B
SUPPLEMENTAL ENVIRONMENTAL PROJECT – SCOPE OF WORK
SEP NO. 2 – GAS DETECTION SYSTEM

In satisfaction of its obligations under this Consent Agreement and Final Order (CAFO), Plaze, Inc. (Respondent) will complete the following supplemental environmental project (SEP). A SEP is a beneficial environmental project that Respondent has voluntarily agreed to undertake as part of the resolution and settlement of this matter, but one which the Respondent is not otherwise legally required to perform and that primarily benefits public health or the environment. EPA has approved the following SEP, in addition to the civil penalty set forth in this CAFO, for the settlement of this matter.

1. The SEP described in this Scope of Work is designed to assist in proactively identifying and preventing accidental releases of flammable substances from Respondent's facility along with mitigating and minimizing the consequence of any such accidental release.

2. The SEP will involve the acquisition and installation of a propane gas detection system at Respondent's tank farm.

3. The work will involve the installation of: four gas detectors around the perimeter of the tank farm; one GasGard® XL Controller; two signal stations, and one automatic alarm dialer.

4. The four gas detectors will be OPIR-5 Open Path Infrared Gas Detectors or an equivalent thereto, manufactured by Ultima, with the ability for continuous monitoring of propane.

5. The automatic alarm dialer will be an OMA-GUARDIT rugged system or an equivalent thereto, and will be capable of calling a list of up to eight pre-programmed phone numbers until an acknowledgement is received.

6. Within one-hundred and eighty (180) days from the effective date of this CAFO, Respondent agrees that it will have completed installation of the gas detection system at the tank farm.

7. Within seven months from the effective date of this CAFO, Respondent agrees that it will submit to EPA a SEP Completion Report, which includes all elements required by the CAFO.

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that a true and correct copy of the foregoing order was sent this day in the following manner to the addressees:

Copy delivered to Attorney for Complainant:

Britt Bieri (e-copy)

Copy delivered to Respondent via U.S. Mail:

Gary Myers
Plaze, Inc.
105 Bolte Lane
St. Clair, Missouri 63077

Copy delivered to Respondent's attorney via email:

Andrew Brought
Spencer Fane LLP
1000 Walnut, Suite 1400
Kansas City, Missouri 64106
abrought@spencerfane.com

Dated this 12th day of October, 2017.

Lisa Haugen
Regional Hearing Clerk