REGION 9
SAN FRANCISCO, CA 94105

IN THE MATTER OF:	
City of Tolleson, Arizona Wastewater Treatment Plant	**Docket No. CAA § 112(r)-09-2024-0023**
	CONSENT AGREEMENT AND FINAL ORDER **40 C.F.R. §§ 22.13 and 22.18**
Respondent	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3)(A) and (d), Section 313(c) of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region 9. Respondent is the City of Tolleson, Arizona.

2. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 312 of EPCRA, 42 U.S.C. 11022, and Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.

B. GENERAL ALLEGATIONS

3. Respondent owns and operates a wastewater treatment plant located at 9501 West Pima Street, Tolleson, Arizona.

4. The plant uses chlorine, stored as liquified gas under pressure, to disinfect wastewater.

5. In its October 2020 risk management plan, the plant indicated that it stored up to 12,000 pounds of chlorine on-site in one-ton cylinders.

6. On November 3, 2022, EPA performed an inspection of the plant to evaluate Respondent's implementation of and compliance with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304–12 of EPCRA, 42 U.S.C. §§ 11004–12, and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9603. Based upon the information gathered during the inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA and EPCRA.

7. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations codified at 40 C.F.R. Part 68, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity ("TQ") must prepare and implement a risk management plan ("RMP") to detect and prevent or minimize accidental releases of such substances from the stationary sources in order to protect human health and the environment.

8. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

9. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA

pursuant to Delegation 7-6-A, dated August 4, 1994. The Regional Administrator of EPA Region 9 has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division pursuant to Regional Delegation R9-7-6-A, dated February 11, 2013.

10. In a letter dated November 27, 2022, the United Sates Department of Justice granted EPA a waiver from the condition specified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), that the first alleged date of violation occurred no more than one year before the initiation of the administrative action, to allow EPA to pursue certain administrative actions for violations of 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). This administrative action falls within the scope of that waiver.

11. Section 312(a) of EPCRA, 42 U.S.C. 11022(a), requires the owner or operator of facilities subject to Section 311 of EPCRA to submit an emergency and hazardous chemical inventory form by March 1 of each calendar year to the State Emergency Response Commission, the Local Emergency Planning Committee, and the local fire department.

12. EPCRA Section 312 describes two reporting tiers for providing information on hazardous chemicals at a subject facility. As required by Section 312(g), EPA published two emergency and hazardous chemical inventory forms, Tier I and Tier II, for facilities to report information on hazardous chemicals. The Tier I form contains general information on hazardous chemicals at the facility. The Tier II form contains specific information on hazardous chemicals present at the facility.

13. The Tier II reporting requirement applies to the owner or operator of any facility that is required under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a Safety Data Sheet for a hazardous chemical present at the facility.

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

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

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

17. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each "regulated substance" at or above which a facility using such a substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as "regulated toxic substances," the TQs are specified at 40 C.F.R. § 68.130, Tables 1 and 2.

18. Chlorine is a "regulated toxic substance" listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 2,500 pounds pursuant to 40 C.F.R., § 68.130 Table 1.

19. At all times relevant to this CA/FO, Respondent used or stored 2,500 pounds or more of chlorine at the plant.

20. Because of its proximity to local receptors, the Facility is subject to RMP Program Level 3, as well as the EPCRA Tier II reporting requirement.

C. VIOLATIONS

COUNT 1: Tier II Inventory Forms

21. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

22. At the time of the inspection, Respondent had not submitted Tier II inventory forms to any state or local emergency planning authority in the last five years.

23. Respondent's failure to submit Tier II inventory forms constitutes a violation of EPCRA Section 312, 42 U.S.C. § 11022.

COUNT 2: Management

24. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

25. 40 C.F.R. § 68.15 requires the owner or operator of a stationary source with processes subject to Program 2 or Program 3 to develop a management system to oversee the implementation of the risk management program elements. The regulation also requires such owners or operators to assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

26. Respondent's documentation was not consistent on the organizational structure or position that had been assigned the overall responsibility for the development, implementation, and integration of the risk management program elements.

27. Respondent's failure to document organizational structure or position of RMP responsibility constitutes a violation of 40 C.F.R. § 68.15.

COUNT 3: Process Safety Information

28. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

29. 40 C.F.R. § 68.65(d) requires owners or operators to compile written process safety information pertaining to equipment in the process, including information related to ventilation system design.

30. Respondent did not have documentation of all necessary information pertaining to the technology of the chlorine process. In addition, pipes containing chlorine gas were not labeled, and the plant had no documentation for the ventilation system in the chlorine storage room. Also, the one-ton chlorine containers located outside were not well protected against heat exposure, vehicle strikes, or access from unauthorized personnel.

31. Respondent's failure to provide adequate process safety information constitutes a violation of 40 C.F.R. § 68.65(d).

COUNT 4: Process Hazard Analysis

32. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

33. 40 C.F.R. § 68.67(e) requires that the owner or operator shall establish a system to, among other things, promptly address the Process Hazard Analysis ("PHA") revalidation team's findings and recommendations, assure that the recommendations are resolved and documented in a timely manner, and complete actions as soon as possible.

34. Respondent did not have documentation of necessary information pertaining to the hazards of the chlorine process, stationary source siting, and human factors. The plant did not have a system for tracking recommendations identified in the process hazard analysis. In addition, the plant had failed to revalidate its PHA.

35. Respondent's failure to document its process hazard analysis constitutes a violation 40 C.F.R. § 68.67.

COUNT 5: Operating Procedures

36. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

37. 40 C.F.R. § 68.69 requires owners or operators 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 specifies certain requirements for each written operating procedure. The regulation requires that operating procedures be reviewed as often as necessary to assure that they reflect current operating practice, and owners or operators shall annually certify that operating procedures are current and accurate.

38. Posted standard operating procedure for handling chlorine did not match the written standard operating procedures. The instructions for testing the chlorine sensors did not specify personal protective equipment. Respondent did not annually certify that the operating procedures are current and accurate.

39. Respondent's failure to ensure standard operating procedures reflect current operating procedures constitutes a violation of 40 C.F.R. § 68.69.

COUNT 6: Training

40. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

41. 40 C.F.R. § 68.71 requires that each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in § 68.69, with refresher training provided at least every three years.

42. Respondent failed to adequately document that an operator had been provided initial or refresher training on operating procedures. The plant also failed to document operator refresher training every three years.

43. Respondent's failure to document employee training constitutes a violation of 40 C.F.R. § 68.71.

COUNT 7: Mechanical Integrity

44. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

45. 40 C.F.R. § 68.73(d)(1) requires that inspection and tests shall be performed on process equipment; (2) inspection and testing procedures shall follow recognized and generally accepted good engineering practices; and (3) the frequency of inspections and tests of process equipment shall be consistent with applicable manufactures recommendations and good engineering practices and more frequently if determined to be necessary by prior operating experience.

46. 40 C.F.R. § 68.73(e) requires that the owner or operator shall 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.

47. Sensor testing records were inconsistent, and it took over a year for a faulty sensor to be repaired. Respondent failed to provide adequate documentation for inspection and testing of process equipment. The wall inside the chlorine storage room was damaged, indicating that the room was not tightly sealed.

48. Respondent's failure to conduct testing and its failure to promptly correct deficiencies in equipment that were outside acceptable limits before further use or in a safe and timely manner constitute a violation of 40 C.F.R. §§ 68.73(d) and (e).

COUNT 8: Management of Change

49. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

50. 40 C.F.R. § 68.75 requires owner or operator 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.

51. Respondent failed to document written management of change as it related to taking chlorinators out of operation and changing chlorine sensors.

52. Respondent's failure to document management of change constitutes a violation of 40 C.F.R. § 68.75.

COUNT 9: Pre-Startup Safety Review

53. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

54. 40 C.F.R. § 68.77 requires owner or operator to perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

55. Respondent failed to document the completion of pre-startup safety review forms for a significant operational change in the chlorine process.

56. Respondent's failure to complete a pre-startup safety review constitutes a violation of 40 C.F.R. § 68.77.

COUNT 10: Compliance Audits

57. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

58. 40 C.F.R. § 68.79(d) requires that the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

59. Respondent had not completed a compliance audit for its chlorine system within the last three years, nor was it able to produce compliance audits since its compliance audit guidelines were written in 1999.

60. Respondent's failure to complete compliance audits constitutes a violation of 40 C.F.R. § 68.79(d).

COUNT 11: Employee Participation

61. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

62. 40 C.F.R. 68.83 requires an owner or operator to develop a written plan of action regarding the implementation of the employee participation required by this section, and consult with employees and their representatives on the conduct and development of process hazard analyses and on the development of the other elements of process safety.

63. Respondent's employee participation responsibilities table did not match the management systems chart.

64. Respondent's failure to consult with employees about process hazard analysis and process safety constitutes a violation of 40 C.F.R. § 68.83.

COUNT 12: Contractors

65. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

66. 40 C.F.R. § 68.87(b)(5) requires that the owner or operator shall periodically evaluate the performance of the contract owner or operator in fulfilling their safety and training obligations as specified in 40 C.F.R. § 68.87(c).

67. Respondent did not adequately obtain and evaluate information regarding contractors' safety performance before selecting contractors, and it did not maintain documentation showing that it periodically evaluated the performance of contractors in fulfilling their safety obligations.

68. Respondent's failure to maintain documentation showing that it periodically evaluated the performance of the contract owner or operator in fulfilling their safety and training obligations constitutes a violation of 40 C.F.R. § 68.87(b)(5).

COUNT 13: Emergency Response

69. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

70. 40 C.F.R. § 68.180 requires that owners and operators include the name, phone number, and email address of local emergency planning and response organizations with which the stationary source last coordinated emergency response efforts, pursuant to 40 C.F.R. § 68.10(g)(3) or § 68.93.

71. Respondent failed to coordinate emergency response activities with the local fire department. The emergency response plan did not include the phone numbers for local, state, or National Response Center contacts in the event of a release.

72. Respondent's failure to coordinate with emergency responders and include required information constitutes a violation of 40 C.F.R. § 68.180.

D. CIVIL PENALTY

73. Upon consideration of the entire record herein, including the Respondent's demonstrated willingness to take measures to prevent a recurrence of the above-described conduct, and upon consideration of the size of the municipality, the economic impact of the penalty, Respondent's compliance history, the duration of the violation, the economic benefit of noncompliance, the seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, including Respondent's agreement to perform the Supplemental Environmental Projects ("SEPs") set forth below, EPA proposes that Respondent be assessed, and Respondent agrees to pay **FORTY SEVEN THOUSAND SIXTY-EIGHT DOLLARS ($47,068)**, as the civil penalty for the violations alleged herein.

74. The proposed penalty was calculated in accordance with the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(l), 112(r)(7), and 40 C.F.R. Part 68" dated June 2012, the "Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-To-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act" dated September 30, 1999, and was adjusted for inflation by

the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVER OF RIGHTS

75. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section H of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CA/FO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

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

77. This settlement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CA/FO.

78. This CA/FO will not be construed to create rights in, or grant any cause of action to, any third party not party to this CA/FO.

F. PARTIES BOUND

79. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section H (and any additional civil penalty

required under Section J) have been paid and any delays in performance and/or stipulated penalties have been resolved.

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

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

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

G. CONDITIONS OF SETTLEMENT

83. Respondent shall complete the following compliance tasks:

a. Respondent shall provide written documentation detailing the specifications of its ventilation system in the chlorine storage room by December 31, 2024.

b. Respondent shall complete the three remaining open recommendations in its 2023 compliance audit by December 31, 2024.

84. All submissions to EPA in this Section shall be in writing and submitted to Bridget Johnson at johnson.bridget@epa.gov.

85. Extension(s) of Time. Respondent shall complete the tasks required in this Section by the deadline for the tasks. If Respondent is unable to complete the tasks required in this Section by the deadlines, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit a request within seven (7) days of identifying a need for modification. Based on this request, EPA may in its sole discretion grant or deny, in full

or in part, the request for modification. EPA shall respond as soon as possible and within no later than 30 days after receipt of a request for extension of time.

86. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 1.162-21(b)(2), performance of these compliance tasks is restitution, remediation, or required to come into compliance with the law.

H. PAYMENT OF CIVIL PENALTY

87. Respondent agrees to pay a civil penalty in the amount of **FORTY-SEVEN THOUSAND SIXTY-EIGHT DOLLARS ($47,068)**, ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

88. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: https://www.epa.gov/financial/makepayment. For additional instructions see: https://www.epa.gov/financial/additional-instructions-making-payments-epa.

89. When making a payment, Respondent shall:

a. Identify every payment with Respondent's name and the docket number of this Agreement, CAA § 112(r)-09-2024-0023.

b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105
r9hearingclerk@epa.gov

Bridget Johnson
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
Hawthorne Street
San Francisco, CA 94105
johnson.bridget@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of such payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

90. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States

the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

91. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government),

which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

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

d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

92. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

93. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

I. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

94. In response to the alleged violations of the CAA and EPCRA and in settlement of this matter, although not required by the CAA or EPCRA or any other federal, state or local law, Respondent agrees to implement two SEPs, as described below.

95. Respondent shall complete two separate SEPs, consisting of (1) the installation of a new chlorine dosing and detection system ("SEP 1"), and (2) a disinfection alternatives study ("SEP 2").

96. SEP 1 comprises the installation of a new chlorine dosing and detection system that also provides operators with the ability to remotely isolate chlorine cylinders, in accordance with manufacturer's instructions and planning documents that have previously been submitted to EPA. This SEP will increase safety and public health protection at the plant by improving its dosing capabilities, improving the ease of maintaining the chlorine detection system, and allowing the remote isolation of chlorine cylinders, which could prevent or minimize the effects of an accidental release.

97. SEP 1 includes the installation of two chlorine gas ejectors, two secondary check valves, four vacuum regulators, four shutoff actuator isolation valves, a chlorine gas detector, a pacing valve with remote monitor, and an emergency shutoff actuator. The cost of SEP 1 is estimated at $73,182.

98. SEP 2 is a disinfection alternatives study. SEP 2 will study the characteristics of wastewater effluent and utilize bench or pilot testing to recommend alternative disinfection methods in accordance with study planning documents that have previously been submitted to EPA. SEP 2 could lead to the elimination of the storage and use of chlorine at the plant. The alternatives studied will include, at a minimum, sodium hypochlorite and peracetic acid.

99. Respondent has committed to performing the disinfection alternatives study in three phases described in a scope of work document prepared by its consultant and submitted to EPA. Phase 100, project initiation, is estimated to cost at least $65,000. Phase 200, Alternative Analysis, is estimated to cost $83,000. Phase 300, Preliminary Design, is estimated to cost $31,000. The study also budgets $16,000 for allowances, bringing the total cost of the disinfection alternative study to $195,000.

100. Respondent shall expend no less than $250,000 on implementing the SEPs. Respondent shall include documentation of the expenditures made in connection with the SEPs as part of the SEP Completion Reports.

101. Respondent shall complete the SEPs by June 30, 2025.

102. The SEPs are consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). Each SEP advances at least one of the objectives of CAA and EPCRA by reducing the risk of chemical releases from the facility. The SEPs are not inconsistent with any provision of the CAA or EPCRA. The SEPs relate to the alleged violations and are designed to reduce the overall risk to public health and the environment potentially affected by the alleged violations by decreasing the likelihood of a chlorine release and increasing the facility's capacity to respond to an accidental release.

103. 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 the SEPs is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEPs is at least TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000);

b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That neither SEP is a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

d. That Respondent has not received and will not have received credit for either SEP in any other enforcement action;

e. That Respondent will not receive reimbursement for any portion of either SEP from another person or entity;

f. 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 the SEPs; and

g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs described in this section.

104. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to either SEP under this CA/FO from the date of Respondent's execution of this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Environmental Protection Agency to enforce federal laws."

105. SEP Reports.

a. Respondent shall submit a SEP Completion Report for each SEP to EPA within 30 days of completion of the SEP. Each SEP Completion Report shall contain the following information, with supporting documentation:

i. A detailed description of the SEP as implemented;

ii. A description of any operating problems encountered and the solutions thereto;

iii. Itemized costs;

iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and

v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

b. Respondent agrees that failure to submit a SEP Completion Report for either SEP shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Section J of this CA/FO.

c. Respondent shall submit all notices and reports required by this CAFO to:

Bridget Johnson
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
Hawthorne Street
San Francisco, CA 94105
johnson.bridget@epa.gov

d. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. 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. Canceled 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.

106. EPA acceptance of SEP Report.

a. After receipt of each SEP Completion Report, EPA will, in writing to the Respondent, either:

i. Identify any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or

ii. Indicate that EPA concludes that the project has been completed satisfactorily; or

iii. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Section J herein.

b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent.

J. DELAY IN PERFORMANCE/STIPULATED PENALTIES

107. Stipulated Penalties

a. Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete the requirements regarding the SEPs specified in Section I

by the deadline in Paragraph 101 Respondent agrees to pay, in addition to the civil penalty in Paragraph 87, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:

i. $250 per day for days 1-30

ii. $500 per day for days 31 – 60

iii. $750 per day for days 61+.

b. If Respondent fails to timely submit any SEP reports in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:

i. $250 per day for days 1-30

ii. $500 per day for days 31+

c. If Respondent does not satisfactorily complete either SEP, including spending the minimum amount on the SEP set forth in Paragraph 100 in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS ($275,000). “Satisfactory completion” of a SEP is defined as Respondent spending no less than $250,000 to complete the SEPs described in Paragraphs 95 through 99. The determinations of whether the SEPs have been satisfactorily completed shall be in the sole discretion of EPA.

d. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.

e. 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 Section H above. Interest and late charges shall be paid as stated in Paragraph 90.

K. RESERVATION OF RIGHTS

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

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

110. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action should EPA determine that such actions

are warranted except as it relates to those matters resolved by this CA/FO. Full payment of the penalty as described in Section H shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

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

L. MISCELLANEOUS

112. The terms, conditions, and compliance requirements of this CA/FO may not be modified or amended except upon the written agreement of all parties and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements between the parties modifying the SEP schedules described in this CA/FO.

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

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

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

M. NOTICE

116. Unless otherwise specified herein, any notifications, submissions, or communications required by this CA/FO, shall be made in writing and addressed as follows:

To EPA:

Bridget Johnson
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 9
Johnson.bridget@epa.gov

With a copy to:

Matthew K. Trawick
Office of Regional Counsel
U.S. Environmental Protection Agency Region 9
trawick.matthew@epa.gov

To Respondent:

Jamie McCracken
Utilities Director
City of Tolleson Wastewater Treatment Plant
jamie.mccracken@tolleson.az.gov

With a copy to:

Barbara U. Rodriguez-Pashkowski
Attorney for the City of Tolleson
Gust Rosenfeld P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004
bpashkowski@gustlaw.com

117. With regard to notices under Section J (Stipulated Penalties), any party may, by written notice to the other parties, change its designated notice recipient or notice address provided above.

118. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this CA/FO or by mutual agreement of the parties in writing.

N. EFFECTIVE DATE

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

IT IS SO AGREED.

Respondent City of Tolleson

DATE: 26/06/24

BY: Reyes Medrano, Jr. (Jun 26, 2024 16:55 PDT)

Reyes Medrano
City Manager

Complainant United States Environmental Protection Agency, Region 9

DATE: _____

BY: JOEL JONES Digitally signed by JOEL JONES Date: 2024.06.27 16:20:30 -07'00'

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

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ("CA/FO") in the Matter of City of Tolleson Wastewater Treatment Plant. (Docket No. CAA 112(r) 09-2024-0023) be entered and that Respondent pay a civil penalty of **FORTY-SEVEN THOUSAND SIXTY-EIGHT DOLLARS ($47,068)** due within thirty (30) days from the Effective Date of this CA/FO, in accordance with all terms and conditions of this CA/FO.

STEVEN JAWGIEL

Digitally signed by STEVEN JAWGIEL
Date: 2024.06.28 10:42:56 -07'00'

Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region 9

CERTIFICATE OF SERVICE

I hereby certify the original copy of the foregoing Consent Agreement and associated Final Order in the matter of City of Tolleson, Arizona Wastewater Treatment Plant Docket No. CAA § 112(r)-09-2024-0023, was filed with the Regional Hearing Clerk, Region IX and that a true and correct copy was sent by electronic mail to the following parties:

RESPONDENT:

Jamie McCracken
Utilities Director
City of Tolleson Wastewater Treatment Plant
Jamie.mccracken@tolleson.az.gov

Barbara U. Rodriguez-Pashkowski
Attorney for the City of Tolleson
Gust Rosenfeld P.L.C.
One East Washington Street, Suite 1600
Phoenix, AZ 85004
Bpashkowski@gustlaw.com

COMPLAINANT:

Matthew Trawick, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105
Trawick.Matthew@epa.gov

GRACE ELAM

Digitally signed by GRACE ELAM
Date: 2024.06.28 12:56:05 -07'00'

Ponly Tu
Regional Hearing Clerk
U.S. EPA – Region IX