

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

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| <b>In the Matter of:</b>                | ) | <b>Docket No. CAA-05-2023-0009</b>                |
|   | ) |   |
| <b>Illinois-American Water Company</b>  | ) | <b>Proceeding to Assess a Civil Penalty</b>       |
| <b>Water Treatment Plant Alton, IL,</b> | ) | <b>Under Section 113(d) of the Clean Air Act,</b> |
|   | ) | <b>42 U.S.C. § 7413(d)</b>                        |
| <b>Respondent.</b>                      | ) |   |
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**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Illinois-American Water Company (IAWC), a corporation doing business in Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.
8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.
9. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$51,796 per day of violation up to a total of \$414,364 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.
10. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
11. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

### **Statutory and Regulatory Background**

#### **Clean Air Act, Subsection 112(r)**

12. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

13. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.
14. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.
15. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.
16. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

17. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which is codified, as amended, at 40 C.F.R. § 68.130.

**40 C.F.R. Part 68: Chemical Accident Prevention Provisions**

18. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which is codified at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (CAPP or Part 68). *See* 84 Fed. Reg. 69834 (Dec. 19, 2019).<sup>1</sup>

19. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

**A) Applicability**

20. The CAPP at 40 C.F.R. § 68.10(a) provides that 40 C.F.R. Part 68 applies to owners or operators of stationary sources that have more than a threshold quantity of a regulated substance in a process as determined under 40 C.F.R. § 68.115, starting no later than the date on which a regulated substance is first present above the threshold quantity in a process.

21. Provisions at 40 C.F.R. § 68.3 of the CAPP provide that “regulated substance” means any substance listed pursuant to Section 112(r)(3) of the Act at 40 C.F.R. § 68.130.

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<sup>1</sup> *See also* 87 Fed. Reg. 53556 (Aug. 31, 2022) (currently proposed amendment).

22. The provision at 40 C.F.R. § 68.115(a) states that “[a] threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”
23. Table 1 in 40 C.F.R. § 68.130(a) lists, amongst other things, chlorine as a regulated toxic substance with a threshold quantity of 2,500 pounds.
24. Provisions at 40 C.F.R. § 68.3 of the CAPP provide that “process” means “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 purposes of this definition, a single process includes “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 . . .” A “covered process” means “a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.”
25. The provision at 40 C.F.R. § 68.10(i) of the CAPP provides, in pertinent part, that a covered process is subject to Program 3 requirements if the process does not meet the requirements of 40 C.F.R. § 68.10(g) and if either of the following conditions is met: the process is in North American Industry Classification System code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 CFR § 1910.119.
26. Provisions at 40 C.F.R. §§ 68.12(a) and (d) of CAPP identify CAPP requirements that the owner or operator of a stationary source with a process subject to Program 3 shall meet, which include, among other provisions, requirements regarding management, hazard assessment, the Program 3 prevention program, and emergency response.

**B) Management**

27. Under 40 C.F.R. § 68.15(b), the owner or operator of a stationary source with processes subject to Program 3 requirements is required to assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.
28. Pursuant to 40 C.F.R. § 68.15(c), when responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under 40 C.F.R. § 68.15(b), the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

**C) Hazard Assessment**

29. The worst-case release scenario is to be calculated using a release quantity that is the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity. 40 C.F.R. § 68.25(b)(1).
30. The provisions at 40 C.F.R. §§ 68.39(a)-(b) of CAPP provide, in pertinent part, that the owner or operator shall maintain the following records on the offsite consequence analyses for the worst-case scenarios and alternative release scenarios: a description of the vessel or pipeline and substance selected, assumptions and parameters used, and the rationale for the selection, as well as the anticipated effect of the controls and mitigation on the release quantity and rate.

**D) Process Safety Information**

31. Program 3 provisions at 40 C.F.R. § 68.65(d)(1)(v) require that written Process Safety Information (PSI) of ventilation system design for the equipment in the process be compiled before conducting any process hazard analysis required by CAPP.

**E) Process Hazard Analysis**

32. Program 3 provisions at 40 C.F.R. § 68.67(a) state that “[t]he owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process.” (PHA)

33. Program 3 provisions at 40 C.F.R. § 68.67(c) require that a PHA address, in part, the following:

- a. The identification of any previous incident that had a likely potential for catastrophic consequences (40 C.F.R. § 68.67(c)(2));
- b. Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases (40 C.F.R. § 68.67(c)(3));
- c. Consequences of failure of engineering and administrative controls (40 C.F.R. § 68.67(c)(4)); and
- d. A qualitative evaluation of a range of the possible safety and health effects of failure of controls (40 C.F.R. § 68.67(c)(7)).

34. Program 3 provisions at 40 C.F.R. § 68.67(d) require that the PHA “shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.”

35. Program 3 provisions at 40 C.F.R. § 68.67(e) require that for the PHA findings, the “owner or operator shall establish a system to promptly address the team's findings and

recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.”

36. Program 3 provisions at 40 C.F.R. § 68.67(f) state that “[a]t least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (d) of this section, to assure that the process hazard analysis is consistent with the current process. Updated and revalidated process hazard analyses completed to comply with 29 CFR 1910.119(e) are acceptable to meet the requirements of this paragraph.”

**F) Operating Procedures**

37. Program 3 provisions at 40 C.F.R. § 68.69(a) require, in part, that “[t]he owner or operator shall 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 at least the elements in Section 68.69(a).
38. 40 C.F.R. § 68.69(b) of CAPP provides that operating procedures shall be readily accessible to employees who work or maintain a process.
39. 40 C.F.R. § 68.69(c) of CAPP provides that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice including changes that result from changes in process chemicals, technology, and equipment, and changes to



stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

**G) Training**

40. Program 3 provisions at 40 C.F.R. § 68.71(b) require that “[r]efresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.”

41. Program 3 provisions at 40 C.F.R. § 68.71(c) require that “[t]he owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.”

**H) Mechanical Integrity**

42. Program 3 provisions at 40 C.F.R. § 68.73 apply to the following types of process equipment (40 C.F.R. § 68.73(a)):

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

43. Program 3 provisions at 40 C.F.R. § 68.73(b) require that “[t]he owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.”
44. Program 3 provisions at 40 C.F.R. § 68.73(d)(1) require that “[i]nspections and tests shall be performed on process equipment.”
45. Program 3 provisions at 40 C.F.R. § 68.73(d)(2) state that “[i]nspection and testing procedures shall follow recognized and generally accepted good engineering practices.”
46. Program 3 provisions at 40 C.F.R. § 68.73(d)(3) require that “[t]he frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.”
47. Program 3 provisions at 40 C.F.R. § 68.73(d)(4) state that “[t]he owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.”

**I) Compliance Audits**

48. Program 3 provisions at 40 C.F.R. § 68.79(a) state that “[t]he owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.”

**J) Contractors**

49. Program 3 provisions at 40 C.F.R. § 68.87(b)(1) state that “[t]he owner or operator, when selecting a contractor, shall obtain and evaluate information regarding the contract owner or operator's safety performance and programs.”
50. Program 3 provisions at 40 C.F.R. § 68.87(b)(3) state that “[t]he owner or operator shall explain to the contract owner or operator the applicable provisions of subpart E of this part.” Subpart E of CAPP pertains to emergency response.
51. Program 3 provisions at 40 C.F.R. § 68.87(b)(5) require that “the owner or operator shall periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in paragraph (c) of this section.”
52. Program 3 provisions at 40 C.F.R. § 68.87(c) require that the contract owner or operator meet the following requirements:
  - a. Assure that each contract employee is trained in the work practices necessary to safely perform his/her job;
  - b. Assure that each contract employee is instructed in the known potential toxic release hazards related to his/her job and the process, and the applicable provisions of the emergency action plan;
  - c. Document that each contract employee has received and understood the training required by this section. The contract owner or operator shall prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training;
  - d. Assure that each contract employee follows the safety rules of the stationary source including the safe work practices required by 40 C.F.R. § 68.69(d); and

- e. Advise the owner or operator of any unique hazards presented by the contract owner or operator's work, or of any hazards found by the contract owner or operator's work.

**K) Emergency Response**

53. Emergency response applicability provisions at 40 C.F.R. § 68.90(a) require responding stationary sources to comply, in pertinent part, with the emergency response provisions of 40 C.F.R. §§ 68.93, 68.95, and 68.96.

54. The emergency response program at 40 C.F.R. § 68.95 requires, in pertinent part, the development, implementation, and maintenance of each of the following elements at the stationary source:

- a. Procedures for informing the public and the appropriate federal, state, and local emergency response agencies about accidental releases (40 C.F.R. § 68.95(a)(1)(i));
- b. Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures (40 C.F.R. § 68.95(a)(1)(ii));
- c. Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance (40 C.F.R. § 68.95(a)(2)); and
- d. Training for all employees in relevant procedures (40 C.F.R. § 68.95(a)(3)).

**Factual Allegations and Alleged Violations**

**A) Applicability**

55. The IAWC is the owner and operator of the water treatment plant located at 1200 W. Broadway, Alton, Illinois 62002 (the Facility), which treats and chlorinates water.

56. The Facility maintains a maximum inventory of 32,000 pounds of chlorine as liquefied compressed gas.
57. The Facility's chlorine process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management (PSM) standard, 29 C.F.R. § 1910.119, because it contains greater than the threshold quantity of chlorine, listed at 29 C.F.R. § 1910.119 Appendix A as 1,500 pounds of chlorine.
58. The Facility is subject to requirements of Chemical Accident Prevention Provisions in accordance with 40 C.F.R. § 68.10(a) and the requirements of Program 3 in accordance with 40 C.F.R. § 68.10(i).
59. On June 20, 2019, EPA conducted an announced inspection of the Facility.
60. IAWC provided numerous documents at and subsequent to the June 20, 2019 inspection. These documents were related to various aspects of the Facility's risk management program, including: management, hazard assessment, the Program 3 prevention program, and emergency response.
61. Following the June 20, 2019 inspection, EPA prepared an inspection report dated August 28, 2019, and subsequently provided the report to IAWC.
62. On September 19, 2021, EPA issued a Finding of Violation (FOV) to IAWC.
63. Following receipt of the FOV, IAWC communicated with EPA and made three follow-up document submittals on October 11, 2021, December 3, 2021, and August 12, 2022 (Post-FOV Documents).

**B) Management**

64. At the time of the inspection, the Facility Manager was assigned responsibility for all risk management program elements except hot work. Following the inspection, IAWC submitted

a revised management system chart titled "RMP/PSM Program Organization" which reassigns responsibilities for six elements to the Safety Director and two elements to the Loss Control Specialist.

65. At the time of the inspection, the names or positions of the persons responsible for implementing individual requirements of the risk management program and the lines of authority were not updated and documented in an organization chart or similar document. Also the person responsible for hot work permits was not indicated in the document. These are violations of 40 C.F.R § 68.15(c).

**C) Hazard Assessment**

66. At the time of the inspection, IAWC provided three worst-case release scenarios with total releases of 8,000, 4,000, and 2,000 pounds. IAWC provided release modeling using RMP\*Comp for the 8,000- and 4,000-pound release cases, whereas the largest vessel used at the Facility is a 2,000-pound cylinder.
67. At the time of the inspection, IAWC had failed to calculate and model the worst-case release scenario using a release quantity that is the greatest amount held in a single vessel, which is 2,000 pounds of chlorine held in a 1-ton chlorine cylinder, in violation of 40 C.F.R. § 68.25(b)(1).
68. At the time of the inspection, IAWC had failed to model the alternate case release scenario using RMP\*Comp.
69. At the time of the inspection, IAWC had failed to maintain records for the offsite consequence analyses for the worst-case scenarios and the alternative release scenarios required by 40 C.F.R. §§ 68.39(a)-(b), which include the following: a description of the vessel or pipeline and substance selected, assumptions and parameters used, the rationale for

the selection, and the anticipated effect of the controls and mitigation on the release quantity and rate.

**D) Process Safety Information**

70. At the time of the inspection, IAWC had failed to include in the PSI the ventilation system design for the chlorination system, in violation of 40 C.F.R. § 68.65(d)(1)(v).

**E) Process Hazard Analysis**

71. At the time of the inspection, the Facility's most recent PHA, dated September 8, 2011, did not address: the identification of any previous incident that had a likely potential for catastrophic consequences; engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases; consequences of failure of engineering and administrative controls; and a qualitative evaluation of a range of the possible safety and health effects of failure of controls. The PHA documentation provided may not be specific to the Alton, IL Facility as several sections of the PHA note conditions inconsistent with the inspection of the Facility. Further, the PHA did not evaluate the operation of the scrubber. The above-described deficiencies are violations of 40 C.F.R. §§ 68.67(c)(2)-(4), (7).

72. At the time of the inspection, the September 8, 2011 PHA did not document the PHA team and their qualifications, in violation of 40 C.F.R. § 68.67(d), as the PHA needs to be performed by a team with the required expertise.

73. At the time of the inspection, the Facility's most recent hazard and operability analysis (HAZOP) PHA dated September 8, 2011 stated that the recommended action items would be completed by October 2011. The September 8, 2011 "Risk Reduction/Mitigation Recommendations Disposition Record" states that the action items were completed on

September 18, 2013, almost two years later than committed. The closure of recommended action items was not documented for the What-If Checklist for the cylinders. These are in violation of 40 C.F.R. § 68.67(e).

74. The September 8, 2011 PHA failed to address numerous elements required in a PHA, including the following elements: promptly address the team's PHA findings and recommendations; resolve and document the resolution of recommendations in a timely manner; document actions to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and, communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions. These are violations of 40 C.F.R. § 68.67(e).

75. At the time of the inspection, IAWC had not updated and revalidated at least every five (5) years to assure consistency with the current process the Facility's September 8, 2011 PHA, in violation of 40 C.F.R. § 68.67(f).

**F) Operating Procedures**

76. At the time of the inspection, IAWC had failed to develop written operating procedures for the Facility for the following procedures: safely handling, storing, and receiving chlorine cylinders; checking on the hydrotest dates on the chlorine cylinders as the cylinders are received; and safe operation of the scrubber and the chlorine sensors. The above-described deficiencies are violations of 40 C.F.R. §§ 68.69(a)-(c).

**G) Training**

77. At the time of the inspection, IAWC had not provided refresher training at least every three years, and more often if necessary, to each employee involved in operating a process to



assure that the employee understands and adheres to the current operating procedures of the process, in violation of 40 C.F.R. § 68.71(b).

78. The on-the-job training/proficiency record that was reviewed did not document the means used to verify that employees understood the training, in violation of 40 C.F.R. § 68.71(c).

**H) Mechanical Integrity**

79. At the time of the inspection, IAWC had failed to establish and implement written procedures to maintain the ongoing integrity of process equipment at the Facility, in violation of 40 C.F.R. § 68.73(b).
80. At the time of the inspection, the Facility's inspections and tests were not performed on the scrubber and documented, nor performed according to recognized and generally accepted good engineering practices at a frequency consistent with applicable manufacturers' recommendations and good engineering practices. These are violations of 40 C.F.R. § 68.73(d).

**I) Compliance Audits**

81. The first complete compliance audit for the Facility is dated June 17, 2019. At the time of the inspection, IAWC failed to certify that they had evaluated the Facility's compliance with the provisions of the Program 3 Prevention Program at least every three years to verify that procedures and practices developed under the Program 3 Prevention Program are adequate and are being followed, in violation of 40 C.F.R. § 68.79(a).

**J) Contractors**

82. At the time of the inspection, regarding the selection of contractors, IAWC failed to provide information regarding the evaluation of the contract owner or operator's safety performance and programs, in violation of 40 C.F.R. § 68.87(b)(1).

83. At the time of the inspection, IAWC failed to provide information that IAWC had explained to contract owners or operators the applicable provisions of subpart E, Emergency Response, of CAPP, in violation of 40 C.F.R. § 68.87(b)(3).
84. At the time of the inspection, IAWC failed to provide documentation regarding the periodic evaluation of the performance of the contract owner or operator in fulfilling their obligations as specified in 40 C.F.R. § 68.87(c), in violation of 40 C.F.R. § 68.87(b)(5).

**K) Emergency Response**

85. At the time of the inspection, the Facility's Emergency Response Plan states that the Facility is a first responder, but many elements required for a first responder Emergency Response Plan are not included in the plan; further, the narrative description provided at the inspection indicated that the Facility was not prepared as a first responder organization. As a first responder, IAWC had failed to develop, implement, and maintain: procedures for informing the public and local emergency response agencies about accidental releases; documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; procedures for the use of emergency response equipment and for its inspection, testing, and maintenance; and training, and documentation of such training, for all employees in relevant procedures. These are violations of 40 C.F.R. §§ 68.90(a), 68.95(a)(1)(i)-(ii), and 68.95(a)(2)-(3).

**Civil Penalty**

86. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, cooperation, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$59,427.

87. Within 30 days after the effective date of this CAFO, Respondent must pay a \$59,427 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

88. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
[r5airenforcement@epa.gov](mailto:r5airenforcement@epa.gov)

Robert H. Smith  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
[smith.roberth@epa.gov](mailto:smith.roberth@epa.gov)

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

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

90. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

91. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### **General Provisions**

92. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [smith.roberth@epa.gov](mailto:smith.roberth@epa.gov) (for Complainant), [Shannon.haney@amwater.com](mailto:Shannon.haney@amwater.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.
93. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.
94. The effect of the settlement described in paragraph 93, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 97 of this CAFO and the documents mentioned in paragraph 63.
95. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
96. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 93, above,

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

97. Respondent certifies that it is complying fully with the CAPP.
98. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).
99. The terms of this CAFO bind Respondent, its successors and assigns.
100. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
101. Each party agrees to bear its own costs and attorney’s fees in this action.
102. This CAFO constitutes the entire agreement between the parties.

**Illinois American Water Company, Respondent**

01/18/2023  
Date

  
\_\_\_\_\_  
Rebecca Losli, President  
Illinois American Water Company

**United States Environmental Protection Agency, Complainant**

**MICHAEL  
HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2023.01.24  
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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Illinois American Water Company**  
**Docket No. CAA-05-2023-0009**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

**ANN COYLE** Digitally signed by ANN  
COYLE  
Date: 2023.01.26  
15:11:05 -06'00'  
\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5