

**FILED**

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U.S. EPA REGION 5  
HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:** ) **Docket No. CAA-05-2024-0011**  
 ) **Proceeding to Assess a Civil Penalty**  
**Salem Water Treatment Plant** ) **Under Section 113(d) of the Clean Air**  
**Salem, Illinois** ) **Act, 42 U.S.C. § 7413(d)**  
 )  
**Respondent.** )

**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 Salem Water Treatment Plant. Salem is a municipality in the State of 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.

#### **Statutory and Regulatory Background**

9. Under Section 112(r) of the CAA, EPA promulgated the Chemical Accident Prevention Provisions (CAPP) at 40 C.F.R. §§ 68.1 through 68.220.

10. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. §§ 68.1 through 68.220 by June 21, 1999.

11. The CAPP applies to the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

12. 40 C.F.R. § 68.10(a) requires, in part, that the owner or operator of a “stationary source” that has more than a “threshold quantity” of a “regulated substance” in a “process,” as determined under 40 C.F.R. § 68.115, shall comply with the requirements of the Chemical Accident Prevention Provisions no later than the date on which a regulated substance is first present above a threshold quantity in a process.

13. The CAPP, at 40 C.F.R. § 68.30(a), requires the owner or operator to estimate in the [Risk Management Plan (RMP)] the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in §68.22(a).

14. The CAPP, at 40 C.F.R. § 68.69(c), requires the operating procedures to 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.

15. The CAPP, at 40 C.F.R. § 68.73(b), requires the owner or operator to establish and implement written procedures to maintain the on-going integrity of process equipment.

16. The CAPP, at 40 C.F.R. § 68.73(d)(4), requires the owner or operator to 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.

17. The CAPP, at 40 C.F.R. § 68.75(a), requires the 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.

18. The CAPP, at 40 C.F.R. § 68.75(b), requires the management of change procedures to assure that the following considerations are addressed prior to any change: (1) The technical basis for the proposed change; (2) Impact of change on safety and health; (3) Modifications to operating procedures; (4) Necessary time period for the change; and (5) Authorization requirements for the proposed change.

19. The CAPP, at 40 C.F.R. § 68.79(a), requires the owner or operator to 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.

20. The CAPP, at 40 C.F.R. § 68.79(c), requires a report of the findings of the audit to be developed.

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

22. The CAPP, at 40 C.F.R. § 68.79(e), requires the owner or operator to retain the two (2) most recent compliance audit reports.

23. The CAPP, at 40 C.F.R. § 68.93(c), requires the owner or operator shall document coordination with local authorities, including: The names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities.

24. 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.

25. 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.

26. 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.

### **Factual Allegations and Alleged Violations**

27. Salem WTP owns and operates a chlorination process at its water treatment plant on Spillway Road, Salem, Illinois (Facility).

28. The Facility was built before June 21, 1999.

29. On August 24, 2021, EPA conducted an inspection of the Facility.

30. Salem WTP's current RMP for the Facility states that the chlorination process contains a maximum of 8,000 pounds of chlorine.

31. The chlorination process at the Facility contained greater than the threshold quantity of 2,500 pounds of chlorine, listed in Table 1 at 40 C.F.R. § 68.130(b).

32. The chlorination process at the Facility was subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. § 1910.119, because it contained greater than the threshold quantity of 1,500 pounds of chlorine listed at 29 C.F.R. § 1910.119, Appendix A.

33. Pursuant to 40 C.F.R. § 68.10(a), the Facility was subject to requirements of the Risk Management Program Regulations, 40 C.F.R. § 68.1 et seq.

34. Salem WTP's chlorination process at the Facility is a "process," as that term is defined at 40 C.F.R. § 68.3.

35. Salem WTP's chlorination process at the Facility was a "covered process," as that term is defined at 40 C.F.R. § 68.3.

36. Salem WTP's chlorination process at the Facility did not meet the Program 1 requirements of 40 C.F.R. § 68.10(g).

37. Pursuant to 40 C.F.R. § 68.10(i), the chlorination process at the Facility was subject to Program 3 requirements because it was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

38. On February 8, 2022, EPA issued a Finding of Violation in which EPA alleged violations of thirty-eight requirements in the CAPP.

39. On April 8, 2022, and February 16, 2023, Salem WTP provided documents to resolve twenty-seven violations in the Finding of Violation.

40. Salem WTP violated 40 C.F.R. § 68.30(a) by failing to estimate in the RMP the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in §68.22(a).

41. Salem WTP violated 40 C.F.R. § 68.69(c) by failing to certify annually that the written operating procedures are current and accurate.

42. Salem WTP violated 40 C.F.R. § 68.73(b) by failing to establish and implement written procedures to maintain the on-going integrity of the piping systems (including piping components such as valves), relief and vent systems and devices, emergency shutdown systems, and controls (including monitoring devices and sensors, alarms, and interlocks).

43. Salem WTP violated 40 C.F.R. § 68.73(d)(4) by failing to document each inspection and test that had been performed on process equipment, and identified the date of

the inspection or test, 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.

44. Salem WTP violated 40 C.F.R. § 68.75(a) by failing to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect the chlorination process.

45. Salem WTP violated 40 C.F.R. § 68.75(b) by failing to establish and implement written management of change procedures, the procedures do not assure that the following considerations the technical basis for the proposed change, the impact of change on safety and health, modifications to operating procedures, the necessary time period for the change, and the authorization requirements for the proposed change are addressed prior to any change.

46. Salem WTP violated 40 C.F.R. § 68.79(a) by failing to certify that the Salem WTP has evaluated compliance with the provisions of the prevention program at least every 3 years to verify that the developed procedures and practices are adequate and being followed.

47. Salem WTP violated 40 C.F.R. § 68.79(c) by failing to document the audit findings in a report.

48. Salem WTP violated 40 C.F.R. § 68.79(d) by failing to promptly determine and document an appropriate response to each of the findings of the audit and document that deficiencies had been corrected.

49. Salem WTP violated 40 C.F.R. § 68.79(e) by failing to retain the two most recent compliance reports.

50. Salem WTP violated 40 C.F.R. § 68.93(c) by failing to document coordination with local authorities, including the names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; nature of coordination activities.

51. On August 9, 2023, Salem WTP through its attorney advised EPA representatives that Salem WTP will reduce the amount of chlorine stored on site below the threshold quantity in Table 1 to 40 C.F.R. § 68.130, i.e., 2,500 pounds. On August 15, 2023, Salem WTP through its attorney advised EPA representatives that on the previous day, Salem WTP had removed chlorine cylinders at its Facility such that the amount of chlorine being stored on site is below 2,500 pounds. Photographs were provided to EPA representatives to document the removal. On September 8, 2023, Salem WTP through its attorney provided EPA representatives with further details on Salem WTP's internal procedures to ensure continued its adherence to the chlorine storage limit.

#### **Civil Penalty**

52. 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 \$24,275.

53. Within 30 days after the effective date of this CAFO, Respondent must pay a \$24,275 civil penalty by either:

sending a cashier's or certified check via *standard delivery*, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center

P.O. Box 979077  
St. Louis, Missouri 63197-9000

or sending a cashier's or certified check via *delivery requiring receipt confirmation*, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Government Lockbox 979078  
U.S. EPA Fines and Penalties  
3180 Rider Trail S.  
Earth City, Missouri 63045

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

54. 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)

Mark Koller  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
Koller.Mark@epa.gov

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

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

56. 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.

57. 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**

58. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Koller.Mark@epa.gov (for Complainant), and [publicworks@salemil.us](mailto:publicworks@salemil.us) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

59. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

60. The effect of the settlement described in paragraph 59, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 51 of this CAFO.

61. 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.

62. 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 59, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

63. Respondent certifies that it is complying fully with the Chemical Accident Prevention Provisions (CAPP) at 40 C.F.R. §§ 68.1 through 68.220 by storing less than the threshold quantity of chlorine specified in Table 1 to 40 C.F.R. § 68.130, i.e., 2,500 pounds.

64. 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).

65. The terms of this CAFO bind Respondent, its successors and assigns.

66. 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.

67. Each party agrees to bear its own costs and attorney's fees in this action.

68. This CAFO constitutes the entire agreement between the parties.

**Salem Water Treatment Plant, Respondent**



Rex Barbee, City Manager  
City of Salem, Illinois

11-8-2023

Date

**United States Environmental Protection Agency, Complainant**

**MICHAEL  
HARRIS**

 Digitally signed by  
MICHAEL HARRIS  
Date: 2023.12.08 14:56:37  
-06'00'

Michael D. Harris

Director

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Salem Water Treatment Plant**  
**Docket No. CAA-05-2024-0011**

**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.

**ANN COYLE** Digitally signed by ANN  
COYLE  
Date: 2023.12.12 12:45:04  
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Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5