

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA



In the Matter of: )  
 ) Docket No. CAA (112r)-09-2024-0044  
 )  
K2 PURE SOLUTIONS NOCAL, L.P., )  
 )  
 ) CONSENT AGREEMENT AND FINAL  
 ) ORDER PURSUANT TO  
 ) 40 C.F.R. §§ 22.13 AND 22.18  
Respondent. )  
\_\_\_\_\_ )

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and K2 Pure Solutions Nocal, L.P. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is an administrative proceeding instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3)(A) and (d), for the assessment of a civil administrative penalty against Respondent for violations of Section 112(r) of the CAA.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.

3. Respondent is a Delaware limited partnership licensed to conduct business in California whose principal offices are located at 30 Rockefeller Plaza in New York, New York.

#### B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and its implementing regulations, owners and operators of stationary sources producing, processing, handling or storing a chemical in 40 C.F.R. Part 68, or any other extremely hazardous substance, have a general duty to identify hazards that may result from releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.
5. Pursuant to Section 112(r) of the CAA, EPA established a “threshold quantity” (“TQ”) for each “regulated substance,” above which a facility shall be subject to the requirements of Section 112(r) of the CAA. For substances designated as “regulated toxic substances” or “regulated flammable substances,” the TQs are specified at 40 C.F.R. § 68.130.
6. Chlorine is a “regulated toxic substance” listed under CAA § 112(r)(3) with a TQ of 2,500 pounds. *See* 40 C.F.R. § 68.130, Table 3.
7. Hydrogen is a “regulated toxic substance” listed under CAA § 112(r)(3) with a TQ of 10,000 pounds. *See* 40 C.F.R. § 68.130, Table 3.
8. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(a), the owner or operator of a covered stationary source must submit a Risk Management Plan (“RMP”), as provided in 40 C.F.R. §§ 68.150 - 68.185.
9. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.10(i), the owner or operator of a

covered stationary source with a process in an NAICS code listed in 40 C.F.R. § 68.10(i)(1) or subject to the Occupational Health and Safety Act (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119 is subject to the “Program 3” requirements set forth in 40 C.F.R. § 68.12(d).

10. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(d), facilities subject to the Program 3 requirements are required to implement the prevention requirements set forth in 40 C.F.R. §§ 68.65 through 68.87 and the emergency response program requirements set forth in 40 C.F.R. §§ 68.90 through 68.96.
11. Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3), define “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”
12. Section 302(g) of the CAA, 42 U.S.C. § 7602(g), defines “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.”
13. The Administrator of EPA may assess against any person who violates any provision of CAA § 112(r) a civil penalty of up to \$55,808 per day for each offense that occurred after November 2, 2015. See Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 88 Fed. Reg. 986 (Jan. 6, 2023).

14. EPA and the United States Department of Justice (“DOJ”) jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. See 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

### C. GENERAL ALLEGATIONS

15. At all times relevant to this CAFO, Respondent was a limited partnership and therefore a "person" as defined in Section 302(e) of CAA, 42 U.S.C. § 7602(e), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
16. At all times relevant to this CAFO, Respondent operated a facility (the “Facility”) located at 950 Loveridge Road in Pittsburg, California, to manufacture chlorine, bleach, and hydrochloric acid.
17. The real property and improvements thereto located at the Facility are 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).
18. At all times relevant to this CAFO, Respondent produced, used or stored more than 2,500 pounds of chlorine at the Facility and was subject to the requirements of CAA § 112(r)(7).
19. At all times relevant to this CAFO, Respondent produced, used or stored hydrogen at the Facility and was subject to the requirements of CAA § 112(r)(1).
20. At all times relevant to this CAFO, Respondent was subject to Program 3 requirements because it had public receptors within the distance to the endpoint for the worst-case

release and was subject to the OSHA process safety management standard set forth in 29 C.F.R. § 1910.119.

21. EPA's National Enforcement Investigation Center conducted an off-site investigation of Respondent's operations at the Facility pursuant to Section 112(r) of CAA, 42 U.S.C. § 7412(r), Sections 304–12 of Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004–12, and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9603(a) and documented its observations in an inspection report dated June 3, 2020. On October 21-23, 2021, EPA performed an in-person inspection at the Facility for Respondent's compliance with Section 112(r) of CAA, 42 U.S.C. § 7412(r), and Part 68 requirements (the "Inspection") (collectively the "Investigation").
22. Based upon the information gathered during the Investigation, EPA determined that Respondent violated certain provisions of the CAA.

#### D. ALLEGED VIOLATIONS

##### Count 1

##### **(Failure to Comply with Management System Requirement; 40 C.F.R. § 68.15(c))**

23. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
24. 40 C.F.R. § 68.15 requires an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) to develop a management system to oversee the implementation of the risk management plan elements. Specifically, the owner or operator shall assign a qualified person with an overall responsibility for the development, implementation,

and integration of the risk management program elements under 40 C.F.R. § 68.15(b) or document the names or positions of multiple persons responsible for the development, implementation, and integration of the risk management program elements and the lines of authority defined through an organization chart or similar document under 40 C.F.R. § 68.15(c).

25. Based upon the Investigation, EPA determined that Respondent failed to document the names of multiple persons responsible for the development, implementation, and integration of the risk management program elements at the Facility and appropriately define the lines of authority in an organization chart or similar document from 2020 to 2022.
26. Accordingly, EPA alleges that Respondent violated the management system requirements set forth at CAA § 112(r) and 40 C.F.R. § 68.65(c) from 2020 to 2022.

**Count 2**

**(Failure to Comply with Process Safety Information Requirement;**

**40 C.F.R. § 68.65(d)(1)(ii)**

27. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
28. 40 C.F.R. § 68.65(a) requires an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) to complete a compilation of written process safety information before conducting any process hazard analysis required under the rule. The compilation of written process safety information will enable the owner or operator and

the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances.

29. Under 40 C.F.R. § 68.65(d)(1)(ii), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must compile information pertaining to the equipment in the covered process including piping and instrument diagrams (“P&IDs”).
30. During the Inspection, EPA observed process equipment that were not consistent with the P&IDs for the Facility and determined that Respondent failed to compile adequate information for the Facility relating to the P&ID in 2021.
31. Accordingly, EPA alleges that Respondent violated the process safety information requirements set forth at CAA § 112(r) and 40 C.F.R. § 68.65(d)(1)(ii) in 2021.

**Count 3**

**(Failure to Comply with Process Safety Information Requirement;**

**40 C.F.R. § 68.65(d)(1)(iv))**

32. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
33. Under 40 C.F.R. § 68.65(d)(1)(iv), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must compile information pertaining to the relief system design and design basis.
34. Based upon the Investigation, EPA determined that Respondent failed to compile adequate information for the Facility relating to the relief system design and design basis from 2020 to 2022.

35. Accordingly, EPA alleges that Respondent violated the process safety information requirements set forth at CAA § 112(r) and 40 C.F.R. § 68.65(d)(1)(iv) from 2020 to 2022.

**Count 4**

**(Failure to Comply with Process Safety Information Requirement;**

**40 C.F.R. § 68.65(d)(2))**

36. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
37. 40 C.F.R. § 68.65(d)(2) requires an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) to document that process equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).
38. Based upon the Investigation, EPA determined that Respondent failed to document that pressure relief devices and chlorine expansion chambers at the Facility complied with RAGAGEP from 2021 to 2023.
39. Accordingly, EPA alleges that Respondent violated the process safety information requirements set forth at CAA § 112(r) and 40 C.F.R. § 68.65(d)(2) from 2021 to 2023.

**Count 5**

**(Failure to Comply with Process Hazard Analysis Requirement; 40 C.F.R. § 69.67(e))**

40. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
41. Under 40 C.F.R. § 68.67, an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must perform a Process Hazard Analysis (“PHA”) on processes

covered by the CAA § 112(r) requirements to identify, evaluate, and control the hazards involved in the process.

42. Under 40 C.F.R. § 68.67(e), the owner or operator must establish a system to promptly address the findings and recommendations of a PHA; 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 written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance and other employees who may be affected by the recommendations or actions.
43. Based upon the Investigation, EPA determined that Respondent failed to establish a system to promptly address the findings and recommendations for electrolyzers as recommended in a PHA performed at the Facility in 2013, and for chlorine gas and liquid systems as recommended in a PHA performed at the Facility in 2014.
44. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.67(e) by failing to establish a system to promptly address the findings and recommendations of PHAs from March 2019 until March 2022.

#### Count 6

#### **(Failure to Comply with Process Hazard Analysis Requirement; 40 C.F.R. § 69.67(f))**

45. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.

46. Under 40 C.F.R. § 68.67(f), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must update and revalidate the initial PHA at least every five years after its completion to assure that the PHA is consistent with the current process.
47. Based upon the Investigation, EPA determined that Respondent failed to update and revalidate the 2013 PHA for electrolyzers at the Facility and the 2014 PHA for chlorine gas and liquid systems at the Facility until March 2022.
48. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.67(f) by failing to update and revalidate PHAs at least every five years.

#### **Count 7**

#### **(Failure to Develop and Implement Adequate Operating Procedures; 40 C.F.R. § 68.69(a))**

49. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
50. Under 40 C.F.R. § 68.69(a), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must 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, including but not limited to safety and health considerations.
51. Based upon the Investigation, EPA determined that the written operating procedures for the Facility contained incorrect process and instrument diagrams and incomplete or inconsistent operating procedures from 2020 to 2022.
52. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.69(a), by failing to adequately 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 from 2020 to 2022.

**Count 8**

**(Failure to Document Refresher Training; 40 C.F.R. § 68.71(b), (c))**

53. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
54. Under 40 C.F.R. § 68.71, an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must train employees involved in operating a covered process in an overview of the process and in the appropriate operating procedures. Under 40 C.F.R. § 68.71(b), the owner or operator must provide refresher training to each employee involved in operating a covered process at least every three years to assure that the employee understands and adheres to the current operating procedures of the process. Under 40 C.F.R. § 68.71(c), the owner or operator must also document the identity of the employee provided the required training, the date of training, and the means used to verify that the employee understood the training.
55. Based upon the Investigation, EPA determined that Respondent failed to adequately document refresher training of employees who work on or near covered processes at least every three years from 2020 to 2022.
56. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.71(b) and (c), by failing to adequately document refresher training of employees who work on or near covered processes at least every three years from 2020 to 2022.

**Count 9**

**(Failure to Conduct Adequate Inspections and Tests; 40 C.F.R. § 68.73(d))**

57. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
58. Under 40 C.F.R. § 68.73(d), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must perform inspections and tests consistent with RAGAGEP on process equipment and 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.
59. Based upon the Investigation, EPA determined that Respondent failed to conduct adequate inspection and tests consistent with RAGAGEP related to fiberglass reinforced polymer piping, interlocks and critical instruments, pressure vessels and other fixed equipment from 2021 to 2022.
60. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.73(d)(1), by failing to perform inspections and tests on process equipment consistent with RAGAGEP from 2021 to 2022.

**Count 10**

**(Failure to Correct Deficient Equipment; 40 C.F.R. § 68.73(e))**

61. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
62. Under 40 C.F.R. § 68.73(e), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must correct deficiencies in covered 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.

63. Based upon the Investigation, EPA determined that Respondent failed to address corroded piping at the Facility that were outside acceptable limits in 2021.

64. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.73(e), by failing to correct deficient 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 in 2021.

**Count 11**

**(Failure to Comply with the Management of Change Requirement;**

**40 C.F.R. § 68.75(a), (b))**

65. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.

66. Under 40 C.F.R. § 68.75(a) and (b), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must establish and implement written procedures to manage changes to process equipment and ensure that such procedures address the technical basis for the change and impact of change on safety and health.

67. Based upon the Investigation, EPA determined that Respondent failed to document the technical basis for and impact on safety and health associated with temporary repairs to flanges and other piping at the Facility in 2019 and 2020.

68. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.75(a) and (b), by failing to document the technical basis for and impact on safety and health associated with changes to certain process equipment in 2019 and 2020.

**Count 12**

**(Failure to Comply with the Compliance Audit Requirement; 40 C.F.R. § 68.79(d))**

69. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.

70. Under 40 C.F.R. § 68.79(a), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must perform a compliance audit at least every three years to verify that procedures and practices developed under the RMP requirements are adequate and are being followed. Under 40 C.F.R. § 68.79(d), the owner or operator must promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

71. Based upon the Investigation, EPA determined that Respondent failed to determine and document responses to each finding of the 2016 and 2018 compliance audits of the Facility, and document that deficiencies identified in the 2016 and 2018 compliance audits were corrected.

72. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.79(d), by failing to determine and document responses to the findings of the 2016 and 2018 compliance audits of the Facility, and document that deficiencies identified in the 2016 and 2018 compliance audits were corrected.

**Count 13**

**(Failure to Comply with the Emergency Response Requirement;**

**40 C.F.R. § 68.95(a))**

73. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
74. Under 40 C.F.R. § 68.95(a), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must develop and implement an emergency response plan containing procedures for notifying the public and appropriate emergency response authorities about accidental releases and procedures and measures for emergency response after an accidental release. The owner or operator also must develop and implement procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.
75. Based upon the Investigation, EPA determined that Respondent failed to implement its emergency response plan as written and lacked adequate procedures for the inspection and testing of self-contained breathing apparatuses at the Facility in 2021.
76. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.95(a), by failing to implement its emergency response plan, and develop and implement procedures for the inspection and testing of emergency response equipment in 2021.

**Count 14**

**(Failure to Comply with the Offsite Consequence Analysis Requirement;**

**40 C.F.R. § 68.165(b)(12))**

77. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
78. Under 40 C.F.R. § 68.165(b)(12), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must perform an offsite consequence analysis that includes various data including public and environmental receptors within the distance to endpoint for an alternative release scenario.
79. Based upon the Investigation, EPA determined that Respondent failed to identify public and environmental receptors within the distance to endpoint in the alternative release scenario in its June 29, 2021 RMP submittal to EPA.
80. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.165(b)(12), by failing to identify public and environmental receptors within the distance to the endpoint in the alternative release scenario on or about June 29, 2021.

**Count 15**

**(Failure to Correct the RMP; 40 C.F.R. § 68.195(a))**

81. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
82. Under 40 C.F.R. § 68.195(a), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must submit information regarding any accidental

release that triggers the five-year accident history reporting criteria of 40 C.F.R. § 68.42 within six months of the release or by the time the RMP is updated, whichever is earlier.

83. Based upon the Investigation, EPA determined that Respondent failed to submit until June 29, 2021, information regarding an accidental October 26, 2017 release at the Facility that triggered the five-year accident history reporting criteria of 40 C.F.R. § 68.42.
84. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.195(a), by failing to timely submit information regarding an accidental release triggering the five-year accident history reporting criteria of 40 C.F.R. § 68.42 within six months of the release or by the time the RMP is updated, whichever is earlier.

#### **Count 16**

##### **(Failure to Comply with the General Duty Clause; CAA § 112(r)(1))**

85. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
86. CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), provides that owners and operators of a stationary source that produces, processes, handles, or stores a regulated substance (as defined in 40 C.F.R. § 68.130) have a general duty to design and maintain a safe facility taking such steps as are necessary to prevent releases.
87. An owner or operator breaches its general duty under CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), if the owner or operator does not maintain a safe facility to prevent accidental releases.

88. A recognized hazard within the chlorine industry is when basic safety information is not maintained for the hydrogen and natural gas process equipment. The failure or malfunction of hydrogen and/or natural gas process equipment is likely to cause harm, as it can result in a catastrophic release of hydrogen or natural gas.
89. Based upon the Investigation, EPA determined that from 2020 to 2023, Respondent failed to develop and maintain accurate electrical classification drawings for the hydrogen and natural gas process equipment at the Facility. Electrical classification drawings are intended to prevent electrical equipment from igniting any flammable mixture.
90. Respondent breached its general duty under CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), by failing to maintain a safe facility to prevent accidental releases from 2020 to 2023.

#### E. RESPONDENT'S ADMISSIONS

91. 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 CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO, including the assessment of the civil administrative penalty under Section I.F of this CAFO, Conditions specified in Section I.G of this CAFO, and the Supplemental Environmental Projects specified in Section I.H of this CAFO; (iv) waives, for the purpose of this proceeding, any right to contest the allegations contained in Section I.D of the

CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

F. CIVIL ADMINISTRATIVE PENALTY

92. Respondent agrees to the assessment of a civil penalty of EIGHTY-FIVE THOUSAND ONE HUNDRED EIGHTY-NINE DOLLARS (\$85,189) for the claims set forth herein as final settlement of the civil claims against Respondent as alleged in Section I.D of the CAFO.

93. Respondent shall pay the assessed penalty according to the terms of this CAFO within thirty (30) days of the Effective Date of the CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods stated at: <https://www.epa.gov/financial/makepayment>.

If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send by e-mail a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[R9hearingclerk@epa.gov](mailto:R9hearingclerk@epa.gov)

Kathryn Kwiecinski  
Enforcement and Compliance Assurance Division (ENF-2-1)  
U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street  
San Francisco, CA 94105  
[Kwiecinski.kathryn@epa.gov](mailto:Kwiecinski.kathryn@epa.gov)

Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at henderson.jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed (EPA recommends encrypting IRS Form W-9 email correspondence); and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
  - i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of this CAFO; and
  - ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

#### G. CONDITIONS

- 94. All submissions to EPA required in this section shall be in writing and sent to Kathryn Kwiecinski, electronically atkwiecinski.kathryn@epa.gov.
- 95. All certifications shall be signed by an authorized representative of Respondent. If a condition directs Respondent to certify facts to EPA, Respondent shall submit a written statement containing the following language: "The undersigned hereby certifies under

penalty of law, and based on information and belief formed after reasonable inquiry, that the statements and information herein and all supporting documentation are true, accurate, and complete.”

96. If Respondent is unable to complete any of the conditions required in this Section within the associated schedule, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit this request within seven (7) days of identifying a need for a modification. Based on this request, EPA may in its sole discretion grant or deny, in full or in part, the request for modification.
97. Respondent is responsible for the satisfactory completion of the conditions described in Paragraphs 99 - 105.
98. After receipt of documentation supporting conditions completion, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the conditions along with a grant of fourteen (14) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the conditions have been completed satisfactorily. If a dispute exists as to the satisfactory completion of these conditions, they will be addressed in accordance with Section I.K of this CAFO.
99. Within 90 days of the Effective Date of this CAFO, Respondent shall replace the instruments listed in Appendix A to conform with the electrical classifications set forth in the Electrical Hazardous Area Classification Plan and Elevations Drawing 3E-2-E1-02 Rev 0. For each instrument listed in Appendix A, Respondent shall submit to EPA the invoice and work order to document the replacement.

100. By December 31, 2024, Respondent shall submit to EPA a copy of the Relief System Design and Design Basis for the Facility.
101. Respondent shall comply with the following requirements for pressure safety valves (“PSVs”) at the Facility:
  - a. Within 180 days of the Effective Date of this CAFO, Respondent shall retain an EPA-approved engineering consulting firm to complete a safety study of the discharge locations for the PSVs listed in Appendix B consistent with RAGAGEP specified in American Petroleum Institute standards 521 and RP754.
  - b. Within 270 days of the Effective Date of this CAFO, Respondent shall submit to EPA a schedule for implementation of any recommendations contained in the safety study required under Paragraph 101.a of this CAFO.
  - c. Within one year of the Effective Date of this CAFO, Respondent shall relocate the atmospheric discharge vent from PSV #3137 for the Suction Chiller (S-3103) to safe discharge locations consistent with American Petroleum Institute standards 521 and RP754.
  - d. Within 24 months of the Effective Date of this CAFO, Respondent shall certify that all PSVs listed in Appendix B discharge to safe locations consistent with the study conducted pursuant to Paragraph 101.a of this CAFO.
102. By December 31, 2024, Respondent shall provide a tracking summary, including the date when recommendations were addressed and type of action taken, and a certification that all PHA items have been addressed for the recommendations identified in the

following PHAs: (1) 2021 Chlorine Gas PHA; (2) 2021 Human Factors and Facility Siting PHA; (3) 2021 Electrolyzer PHA; and (4) 2021 Chlorine Liquid PHA.

103. Within 90 days of the Effective Date of this CAFO, Respondent shall update “On-Stream Leak Repairs of Piping Components Procedure (SOP-QAQC-002)” to include: (1) all tables and figures referenced therein; and (2) corrections to section 10.1.
104. Within 180 days of the Effective Date of this CAFO, Respondent shall submit to EPA a copy of the Management of Change documentation for the revisions to SOP-QAQC-002 required under Paragraph 103 of this CAFO.
105. Within 180 days of the Effective Date of this CAFO, Respondent shall certify that all critical interlock testing is current and provide documentation showing all interlock and critical instruments testing is current.

#### H. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

106. In response to the alleged violations of CAA and in settlement of this matter, although not required by CAA or any other federal, state or local law, Respondent agrees to implement supplemental environmental projects (“SEPs”), as described below in paragraph 107 and in Appendices C and D.
107. The SEPs shall consist of the following projects:
  - a. Respondent shall provide the emergency response equipment specified in Appendix C to Contra Costa Health Services (“CCHS”) to assist it in responding to emergencies in the community where Respondent operates and where chemical processes are undertaken that are regulated by the CAA § 112(r). Respondent is obligated to

expend no less than TWO HUNDRED SIXTY-FOUR THOUSAND NINE HUNDRED NINETY DOLLARS (\$264,990) associated with implementing this SEP.

- b. Respondent shall fund emergency response training through the Chlorine Institute (i.e., CHLOREP Team Training) for the identified response personnel and other hazardous materials responders in the Contra Costa County, California, as specified in Appendix D. This training shall focus on effective public communications and response actions in the event of an accidental release of chlorine. Respondent is obligated to expend no less than NINETY-EIGHT THOUSAND FORTY-ONE DOLLARS (\$98,041) associated with implementing this SEP.
108. Respondent shall spend no less than THREE HUNDRED SIXTY-THREE THOUSAND THIRTY-ONE DOLLARS (\$363,031) on implementing the SEPs. Respondent shall include documentation of the expenditures made in connection with the SEPs as part of the SEP Completion Report. If Respondent's implementation of the SEPs as described in Paragraph 107 and Appendices C and D does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondent will describe how Respondent could expend the full amount consistent with the SEP (e.g., identify, purchase and provide additional emergency response equipment to the emergency response organization identified in Appendices C and D) and describe any such additional equipment purchases in the SEP Completion Report.

109. Respondent shall complete the SEP described in Paragraph 107.a within one (1) year of the Effective Date of this CAFO and the SEP described in Paragraph 107.b within eighteen (18) months of the Effective Date of this CAFO.
110. Identification of SEP Recipient
- a. SEP Recipient
    - i. Respondent has selected CCHS to receive the SEPs identified in Appendices C and D.
    - b. The EPA had no role in the selection of any SEP recipient, or specific equipment identified in the SEP, nor shall this CAFO be construed to constitute EPA approval or endorsement of any SEP recipient, or specific equipment identified in this CAFO.
111. 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). The SEPs advance at least one of the objectives of CAA § 112(r) by significantly enhancing the capability of local first responders to address releases of hazardous substances. The SEPs are not inconsistent with any provision of the CAA. The SEPs relate to the alleged violation(s), and are designed to reduce the overall risk to public health and/or the environment potentially affected by the alleged violations by providing equipment intended to better identify the type and scope of accidental releases of hazardous substances into the environment and training first responders in how to effectively address accidental releases of chlorine, a hazardous substance at issue in this enforcement action.
112. 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 THREE HUNDRED SIXTY-THREE THOUSAND THIRTY-ONE DOLLARS (\$363,031);
- 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 the SEPs are not projects 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 the SEPs in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEPs 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;
- 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 Paragraph 107 and Appendices C and D; and

- h. That Respondent has inquired of the SEP recipient whether it is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEPs and has been informed by the recipient that it is not a party to such a transaction.
- 113. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEPs under this CAFO from the date of its execution of this CAFO shall include the following language:  
“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws.”
- 114. SEP Reports
  - a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days of completion of both SEPs described in Paragraph 107 and Appendices C and D . The SEP Completion Report shall contain the following information, with supporting documentation:
    - i. A detailed description of the SEPs as implemented;
    - ii. A description of any operating problems encountered and the solutions thereto;
    - iii. Itemized costs;
    - iv. Certification that the SEPs have been fully implemented pursuant to the provisions of this CAFO; and

- v. A description of the environmental and public health benefits resulting from implementation of the SEPs (with a quantification of the benefits and pollutant reductions, if feasible).
- b. Respondent agrees that failure to submit the SEP Completion Report required by subsection (a) above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 116 below.
- c. Respondent shall submit all notices and reports required by this CAFO to

Kathryn Kwiecinski  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[Kwiecinski.Kathryn@epa.gov](mailto:Kwiecinski.Kathryn@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.

115. EPA Determination of the Satisfactory Completion of SEPs

- a. After receipt of the SEP Completion Report described in Paragraph 114 above, 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 Paragraph 116 herein.
- b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion 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 Completion Report. If agreement cannot be reached on any such issue(s) 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.

**116. 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 H by the deadline in Paragraph 109, Respondent agrees to pay, in addition to the civil

penalty in Paragraph 92, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:

- i. \$150 per day for days 1-30
- ii. \$200 per day for days 31-60
- iii. \$250 per day for days beyond 60.

b. If Respondent fails to timely submit the SEP Completion Report described in Paragraph 114(a), 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. \$100 per day for days 1-30
- ii. \$150 per day for days 31-60
- iii. \$200 per day for days beyond 60.

c. If Respondent does not satisfactorily complete one or both SEPs, including spending the minimum amount on the SEPs set forth in Paragraph 108 above, Respondent shall pay a stipulated penalty to the United States in the amount of 110% of the estimated cost of the project(s) that was not completed in accordance with Appendices C and/or D. "Satisfactory completion" of the SEP is defined as Respondent spending no less than TWO HUNDRED SIXTY-FOUR THOUSAND NINE HUNDRED NINETY DOLLARS (\$264,990) to fund the purchase and delivery of emergency response equipment as set forth in Appendix C; spending no less than NINETY-EIGHT THOUSAND FORTY-ONE DOLLARS (\$98,041) to fund the training of first responders as set forth in Appendix D; and otherwise complying with the

requirements of Section H of this CAFO by the SEP completion deadlines specified in Paragraph 109 and Appendices C and D . The determinations of whether the SEP has 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 Paragraph 93 above. Interest and late charges shall be paid as stated in Paragraph 93.

#### I. STIPULATED PENALTIES

- 117. In the event that Respondent fails to submit a payment of the civil penalty to EPA by the deadline specified in Paragraph 93 of this CAFO, Respondent shall pay stipulated penalties up to: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay; ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay; and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter.
- 118. In the event that Respondent fails to complete any activity required under Section I.G of this CAFO, Respondent shall pay stipulated penalties up to: ONE THOUSAND DOLLARS (\$1,000) per day for first to fifteenth day of delay; TWO THOUSAND DOLLARS (\$2,000) per day for sixteenth to thirtieth day of delay; and THREE THOUSAND DOLLARS (\$3,000) per day for each day of delay thereafter.

119. After giving effect to any extensions of time granted by EPA, Respondent shall pay a stipulated penalty in the amount of Two Hundred Dollars (\$200) for each day that each notice required by this CAFO is submitted late.
120. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section I.F of this CAFO.
121. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CAFO or with the CAA and the implementing regulations.
122. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CAFO.

#### J. FORCE MAJEURE

123. “Force *majeure*,” for purposes of this CAFO, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent’s contractors, that delays or prevents the performance of any obligation under this CAFO despite Respondent’s best efforts to fulfill the obligation. The

requirement that Respondent exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any potential *force majeure* event (a) as it is occurring and (b) following the potential *force majeure*, such that the delay and any adverse effects of the delay are minimized. “*Force Majeure*” does not include Respondent’s financial inability to perform any obligation under this CAFO.

124. If any event occurs or has occurred that may delay the performance of any obligation under this CAFO, as to which Respondent intends to assert a claim of *force majeure*, Respondent will provide notice orally or by electronic transmission to EPA within five (5) days of when Respondent first knew, or by the exercise of due diligence should have known, that the event would cause a delay. Within fifteen (15) days thereafter, Respondent will provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent’s rationale for attributing such delay to *force majeure*; and a statement as to whether, in the opinion of Respondent, the delay in performance of an obligation under this CAFO resulting from such event may cause or contribute to an endangerment to public health, welfare, or the environment (“15-Day *Force Majeure* Notice”). Respondent will include with any written *Force Majeure* Notice documentation supporting the claim that the delay was attributable to *force majeure*. Failure to substantially comply with the above requirements will preclude Respondent from asserting any claim of *force majeure* for

that event for the period of time in which Respondent has failed to comply with the notice requirements, and for any additional delay caused by such failure. Respondent will be deemed to know of any circumstances of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. If EPA agrees that the delay or anticipated delay is attributable to *force majeure*, it will notify Respondent in writing, within 15 days of receipt of Respondent's notice, and the time for performance of the obligations under this CAFO that are affected by *force majeure* will be extended by EPA, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by *force majeure* will not, of itself, extend the time for performance of any other obligation. EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by *force majeure*. If EPA does not agree that the delay or anticipated delay has been or will be caused by *force majeure*, EPA will notify Respondent in writing of its decision within 15 days of receipt of Respondent's notice.

125. If EPA does not respond within the timeframe above or if EPA does not agree that the delay or anticipated delay has been or will be caused by *force majeure*, Respondent may elect to invoke the dispute resolution process set forth in Section K. Respondent must do so no later than 30 days after: (a) receipt of EPA's notice of decision regarding Respondent's *force majeure* claim; or (b) EPA fails to provide a written response within 30 days after receipt of Respondent's *Force Majeure* Notice.

#### K. DISPUTE RESOLUTION

126. Unless otherwise expressly provided for in this CAFO, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes under this CAFO. The Parties shall attempt to resolve any disagreements concerning this CAFO expeditiously and informally.
127. If Respondent objects to any EPA action taken pursuant to this CAFO, including EPA finding that Respondent has not met its obligations under Section I.G (Conditions) of this CAFO, it shall notify EPA in writing of its objection(s) within seven (7) days. EPA may, in its discretion, submit a response to the objection to Respondent no later than seven (7) days after receipt of Respondent's objection. EPA and Respondent shall have 21 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.
128. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this CAFO.
129. If agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this CAFO.
130. Respondent's obligations under Section I.G of this CAFO shall not be tolled by submission of any objection.

131. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of dispute in accordance with the agreement reached or with EPA's decision, regardless of whether Respondent agrees with the decision.

L. CERTIFICATION OF COMPLIANCE

132. In executing this CAFO, Respondent certifies that, to its knowledge, other than the work to be performed under Section I.G of this CAFO, it has taken all steps necessary to return to full compliance with CAA § 112(r) and its implementing regulations.

M. RETENTION OF RIGHTS

133. In accordance with 40 C.F.R. § 22.18(c), Respondents' full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.D of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.D of the CAFO.

134. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

**N. MISCELLANEOUS**

- 135. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.
- 136. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.
- 137. Each party to this action shall bear its own costs and attorneys' fees.
- 138. Respondent consents to entry of this CAFO without further notice.

**O. EFFECTIVE DATE**

- 139. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

**P. BINDING EFFECT**

- 140. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
- 141. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

Q. NOTICE

142. Except as otherwise provided in Section I.G, any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence submitted from one party to another under this CAFO shall be addressed as follows:

To EPA:

Kathryn Kwiecinski  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[Kwiecinski.Kathryn@epa.gov](mailto:Kwiecinski.Kathryn@epa.gov)

With a copy to:

David Kim  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[Kim.David@epa.gov](mailto:Kim.David@epa.gov)

To Respondent:

David Kahn  
Vice President of Manufacturing and Site Leader  
K2 Pure Solutions Nocal, L.P.  
950 Loveridge Road  
Pittsburg, CA 94565  
[Dkahn@k2pure.com](mailto:Dkahn@k2pure.com)

With a copy to:

Samuel L. Brown, Esq.  
Hunton Andrews Kurth LLP  
50 California Street, Suite 1700  
San Francisco, CA 94111  
[SlBrown@hunton.com](mailto:SlBrown@hunton.com)

FOR RESPONDENT, K2 PURE SOLUTIONS NOCAL L.P.:

3/28/24  
DATE

  
NAME: David A. Kahn  
TITLE: VP Manufacturing

FOR COMPLAINANT, EPA REGION IX:

4/8/2024  
DATE

**AMY MILLER-**  
**BOWEN**

Digitally signed by AMY  
MILLER-BOWEN  
Date: 2024.04.08  
11:39:19 -07'00'

Amy C. Miller-Bowen  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

## II. FINAL ORDER

Complainant and Respondent, K2 Pure Solutions Nocal L.P., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA (112r)-09-2024-0044) be entered, and that Respondent shall pay a civil administrative penalty in the amount of EIGHTY-FIVE THOUSAND ONE HUNDRED EIGHTY-NINE DOLLARS (\$85,189), and otherwise comply with the terms and conditions set forth in the Consent Agreement.

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Beatrice Wong  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

## APPENDIX A

### Instruments to be Upgraded to Meet Electrical Classification Cl.1, Div 1 & Div 2 Gr.B

TAG NAME	P&ID DRAWING
FY-701Z	94565-D-5910
FCZ-701Z	
ZSL-701Z	
PSH-802S	
PSH-801S	
PSL-602S	
ZPV-601V	
PSL-601S	
BSV-554V	
BSV-552V	
ZSL-501V	
PSH-501S	
ZPV-502V	
BSV-505V	
ZPV-503V	
PSL-502S	

## APPENDIX B

### Pressure Safety Devices and Applicable Discharge Locations Subject to RAGAGEP Study

#	Equipment Being Protected	Pressure Safety Device(s) ID#
1	Low Grade Cl <sub>2</sub> Storage Tank No.1 (T-3401A)	PSV-3407 (A/B)
2	Low Grade Cl <sub>2</sub> Storage Tank No.2 (T-3401B)	PSV-3407 (C/D)
3	Dry Chlorine Gas line to Hypo (4"-CDG-01-34095-PP)	PSV-3494
4	Cl <sub>2</sub> Proof Tank No.2 (T-3403A)	PSV-3451 (A/B)
5	Cl <sub>2</sub> Proof Tank No.2 (T-3403B)	PSV-3451 (C/D)
6	High Grade Cl <sub>2</sub> Storage Tank No. 1 (T-3404A)	PSV-3485 (A/B)
7	High Grade Cl <sub>2</sub> Storage Tank No. 2 (T-3404B)	PSV-3485 (C/D)
8	High Grade Cl <sub>2</sub> Storage Tank No. 3 (T-3404C)	PSV-3485 (E/F)
9	High Grade Accumulator (T-3301)	PSV-3334 (A/B)
10	Secondary Liquefier (Shell side - chlorine) E-3302	PSV-3315
11	Secondary Liquefier (Tube - Chlorine) E-3302	PSV-3302
12	Low Grade Evaporator (E-3401)	PSV-3429 (A/B)

## APPENDIX C

### SUPPLEMENTAL ENVIRONMENTAL PROJECT (EQUIPMENT DONATION)

#### Project Description – Overview

This SEP consists of emergency response equipment to be funded by Respondent for the Contra Costa Health Services (“CCHS”) in California to own and use. Within six (6) months following the Effective Date, Respondent will transfer funds to a CCHS account earmarked for the equipment, software, licenses, warranty costs, and related items described below. Subsequently, CCHS will issue a purchase order and take delivery of the equipment and related items described below. The SEP will be considered complete when the equipment and related items described below, or substantially similar equipment in the event the equipment listed below is not available, is delivered to CCHS. If necessary due to product availability or supply chain issues, CCHS may purchase substantially similar equipment after consultation with Respondent. Respondent shall complete this SEP no later than one (1) year after the Effective Date. Upon or in anticipation of any failure of CCHS to timely issue a purchase order and take delivery of the equipment and related items described below, Respondent shall notify EPA in writing within three (3) business days, and the parties may negotiate a reasonable extension of the one-year completion deadline within ten (10) business days after such notice that will be memorialized in writing.

Respondent alone selected the SEP recipient and specific equipment identified herein, with input from CCHS. This CAFO shall not be construed to constitute EPA approval or endorsement of the equipment or technology donated by Respondent in connection with the SEP undertaken pursuant to this Agreement.

#### A. Nexus to the Clean Air Act (CAA), Section 112(r)

This SEP enhances the capabilities of emergency responders, facilitates quick and efficient responses to actual and threatened releases associated with emergency events, and provides tangible environmental and public health benefits primarily for local communities located near Respondent’s facility. Adequate nexus is deemed to exist between this SEP and alleged violations of section 112(r) of the CAA as set forth in the Complaint in accordance with Category G (Emergency Planning and Preparedness) of EPA’s SEP Policy (2015 Update to the 1998 SEP Policy). SEP Category G furthers the ability of emergency response organizations to assess the dangers of hazardous chemicals that are present, develop emergency response plans to better respond to chemical incidents, and fulfill their obligations under the CAA within the same emergency planning district or state affected by the alleged violations and for which no federal financial assistance is available for the purchased materials funded by this SEP.

#### B. Nexus to Communities with Environmental Justice Concerns

The EPA has identified the Pittsburg, California, area as an environmental justice community where residents are overburdened by environmental pollution. The community is located next

to a major highway, large numbers of regulated facilities, and areas with legacy pollution, leading community members to express concerns about their health, environment, and community. Data from the EPA’s environmental justice screening and mapping tool EJScreen suggest a significant potential for environmental justice concerns in the area due to a combination of high pollution burden and population vulnerability. This SEP will mitigate potential damage or reduce potential risks to local communities with environmental justice concerns in the Contra Costa County, including the Pittsburg and East County areas with large minority populations.

**C. Planned Purchase**

Respondent proposes to expend \$264,990 toward the purchase of emergency response equipment for the CCHS. Specifically, Respondent would fund the purchase of the field-deployable identification devices listed below for the detection, identification, and quantification of toxic industrial chemicals, as well as related costs for device licenses, warranties, accessories, and cellular communication equipment. This equipment would continuously detect gas/vapor hazards in low concentrations with minimal user intervention. The devices’ data would be capable of being remotely accessed, which makes them suitable instruments for uncontrolled, unknown, chemical releases.

<b>Item</b>	<b>Unit Price</b>	<b>Quantity</b>	<b>Total Price</b>
QRae (4 gas w/ Cl2 capability) (PGM-2560-BASE)	\$2,700	8	\$21,600
MultiRae Pro (Multi gas meter w/ Cl2 capability) (PGM-6248-BASE)	\$11,00	3	\$33,000
Device Licenses (Safety Suite Responder)	\$540	11	\$5,940
Calibration Gas (Cl2)	\$350	1	\$350
Griffin G510 Person-Portable GC-MS	\$60,000	1	\$60,000
Cl2 sensors for AreaRae Pro	\$800	5	\$4,000
Guaranteed Cost of Ownership for Rae Devices (Warranty)	\$1,600	11	\$17,600
Accusense	\$44,750	2	\$89,500
Accessory Platform (PID, IMS, etc.)	\$2,500	2	\$5,000
Extra Libraries	\$2,500	8	\$20,000
Communications	\$1,500	2	\$3,000

cellular			
Extended Warranty	\$2,500	2	\$5,000
Grand Total			<b>\$264,990</b>

## APPENDIX D

### SUPPLEMENTAL ENVIRONMENTAL PROJECT (TRAINING)

#### Project Description – Overview

This SEP consists of funding an emergency response training through the Chlorine Institute for the CCHS response personnel and other hazardous materials responders in the County, focused on effective public communications and response actions in the event of an accidental release of chlorine. Within six (6) months following the Effective Date, Respondent will transfer funds to a CCHS account earmarked for the above-described training. The SEP will be considered complete when CCHS has completely expended the funds received from Respondent for the training. Respondent shall complete this SEP no later than eighteen (18) months after the Effective Date. Upon or in anticipation of any failure of CCHS to timely expend the funds received from Respondent for the training, Respondent shall notify EPA in writing within three (3) business days, and the parties may negotiate a reasonable extension of the eighteen (18) month completion deadline within ten (10) business days after such notice that will be memorialized in writing.

Respondent alone selected the SEP, with input from CCHS. This CAFO shall not be construed to constitute EPA approval or endorsement of the training provided in connection with the SEP undertaken pursuant to this Agreement.

#### A. Nexus to the Clean Air Act (CAA), Section 112(r)

This SEP enhances the capabilities of emergency responders, facilitates quick and efficient responses to actual and threatened releases associated with emergency events, and provides tangible environmental and public health benefits primarily for local communities located near Respondent's facility. Adequate nexus is deemed to exist between this SEP and alleged violations of section 112(r) of the CAA as set forth in the Complaint in accordance with Category G (Emergency Planning and Preparedness) of EPA's SEP Policy (2015 Update to the 1998 SEP Policy). SEP Category G furthers the ability of emergency response organizations to assess the dangers of hazardous chemicals that are present, develop emergency response plans to better respond to chemical incidents, and fulfill their obligations under the CAA within the same emergency planning district or state affected by the alleged violations and for which no federal financial assistance is available for the purchased materials funded by this SEP.

#### B. Nexus to Communities with Environmental Justice Concerns

The EPA has identified the Pittsburg, California, area as an environmental justice community whose residents are overburdened by environmental pollution. The community is located next to a major highway, large numbers of regulated facilities, and areas with legacy pollution, leading community members to express concerns about their health, environment, and

community. Data from the EPA's environmental justice screening and mapping tool EJScreen suggest a significant potential for environmental justice concerns in the area due to a combination of high pollution burden and population vulnerability. This SEP will mitigate potential damage or reduce potential risks to local communities with environmental justice concerns in the Contra Costa County, including the Pittsburg and East County areas with large minority populations.

**C. Planned Training**

Respondent will provide \$98,041 to CCHS for the CHLOREP Team Training within six (6) months following the Effective Date. Subsequently, CCHS will expend these monies to fund registration fees, reasonable travel and accommodations, and course materials associated with the CHLOREP Team Training for its personnel and other hazardous materials responders in the Contra Costa County of California. The CHLOREP Team Training is a five-day intensive training program that combines classroom instruction with hands-on, scenario-based field exercises to prepare participants for chlorine emergency response. CCHS will have completely expended the funds received from Respondent for the CHLOREP Team Training within eighteen (18) months.

**CERTIFICATE OF SERVICE**

I hereby certify the original copy of the foregoing Consent Agreement and associated Final Order in the matter of K2 Pure Solutions Nocal, L.P., (Docket No. CAA (112r)-09-2024-0044), 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:

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Regional Hearing Clerk  
U.S. EPA – Region IX