UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 1 2011

REPLY TO THE ATTENTION OF:
SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Shane Reeside
City Manager
City of Grosse Pointe Farms
90 Kerby Road
Grosse Pointe Farms, Michigan 48236

Re: **City of Grosse Pointe Farms Water Department, Grosse Pointe Farms, Michigan**
Consent Agreement and Final Order.
Docket No. **CAA-05-2011-0026**

Dear Mr. Reeside:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on 02/01/2011. Please pay the civil penalty in the amount of $14,875 in the manner prescribed in paragraphs 35-41 and reference your check with the number BD 2751103A024 and docket number. In addition, please perform the Supplemental Environmental Project (SEP) in the manner prescribed in paragraphs 42-59.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jose C. de Leon, Esq., Associate Regional Counsel, at (312) 353-7456. Thank you for your assistance in resolving this matter.

Sincerely yours,

Silvia Palomo

Silvia Palomo, Acting Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of: **City of Grosse Pointe Farms Water Department** **29 Moross Road** **Grosse Pointe Farms, Michigan 48236** **EPA ID: 100000104139** **Respondent**	**CONSENT AGREEMENT** **FINAL ORDER** **Docket No. CAA-05-2011-0026**

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY

1. The United States Environmental Protection Agency ("Complainant" or "U.S. EPA"), and the City of Grosse Pointe Farms Water Department ("Respondent"), 629 Moross Road, Grosse Pointe Farms, Michigan 48236, have agreed to settle this action and thus this action is simultaneously commenced and concluded by the execution and filing of this Consent Agreement and Final Order ("CAFO") pursuant to Sections 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"), 40 C.F.R. § 22.13(b), 22.18(b)(2) and (3).

II. JURISDICTION

2. This is an administrative action for the assessment of civil penalties instituted pursuant to Sections 113(a)(3)(A) and (d) of the Clean Air Act ("the Act"), 42 U.S.C.

§ 7413(a)(3)(A) and (d), and the Consolidated Rules, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder.

3. The Complainant is, by lawful delegation, the Director of the Superfund Division, U.S. EPA, Region 5, Chicago, Illinois.

4. Respondent is and was at all times relevant to this action the owner or operator of a stationary source located at 29 Moross Road, Grosse Pointe Farms, Michigan 48236.

5. This CAFO is based on information which indicates that Respondent has violated Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), and the provisions of 40 C.F.R. Part 68 as referenced at 40 C.F.R. §§ 68.12(a) and (c), at the above-referenced stationary source.

III. STATUTORY AND REGULATORY BACKGROUND

6. Section 112(r)(1) of the CAA, 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 paragraph (3) or any other extremely hazardous substance.

7. Section 112(r)(3) of the CAA, 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.

8. Section 112(r)(7)(A) of the CAA, 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.

9. Section 112(r)(7)(B)(i) of the CAA, 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.

10. Section 112(r)(7)(B)(ii) of the CAA, 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 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.

11. Pursuant to authority under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 FR 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

12. Pursuant to authority under Section 112(r) of the CAA, 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 FR 31668 (June 20, 1996), which have since been codified, and amended, at 40 CFR Part 68 – Chemical Accident Prevention Provisions.

13. In November 2006, pursuant to authority under Section 113(d)(1) of the CAA,

42 U.S.C. § 7413(d)(1), the Administrator and U.S. Attorney General jointly determined that administrative penalty actions were an appropriate remedy for all violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), not otherwise precluded by any statute of limitations.

IV. VIOLATIONS AND PENALTY PROVISIONS

14. Section 112 (r)(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.

15. Section 113(d) of the Act 42 U.S.C. § 7413(d) and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to $27,500 per day of violation up to a total of $220,000 for each violation of Section 112(r) of the Act that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to $32,500 per day of violation up to a total of $270,000 for each violation of Section 112(r) of the Act that occurred after March 15, 2004 through January 12, 2009, and may assess a civil penalty of up to $37,500 per day of violation up to a total of $295,000, for violations that occurred after January 12, 2009.

16. Section 113(d)(1) of the Act 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.

V. FINDINGS OF FACT AND CONCLUSION OF LAW

17. Respondent is a "person," as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. Respondent owns and operates a facility, located at 29 Moross Road, Grosse Pointe Farms, Michigan 48236, which facility consists of buildings and operating equipment ("the Facility").

19. In April 2004, pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412, and implementing regulations, 40 CFR Part 68, Respondent submitted to U.S. EPA a Risk Management Plan.

20. In the Risk Management Plan it submitted to U.S. EPA, Respondent admitted the following:

a. that the Facility fell within NAICS Code 44550, as a Water Supply and Irrigation Systems;

b. that it used "Chlorine," CAS No. 7782-50-5, as a process chemical during its operations;

c. that, at the time it submitted its Risk Management Plan, it held at its facility 4,500 lbs. of Chlorine, CAS No. 7782-50-5.

21. On June 3, 2008, an authorized representative of U.S. EPA conducted an inspection at the Facility to determine its compliance with 40 C.F.R. Part 68.

22. Pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), the Administrator has listed chlorine (CAS No. 7782-50-5) as a substance regulated under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), identifying a threshold quantity of 2,500 lbs. of chlorine

(CAS No. 7782-50-5) as causing regulations promulgated thereunder to be applicable. 40 C.F.R. § 68.130, Table 1.

23. The Administrator has defined "stationary source" to mean "any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur." 40 C.F.R. § 68.3.

24. The Facility, identified at Paragraph 18, is a "stationary source" as defined at 40 C.F.R. § 68.3.

25. 40 C.F.R. § 68.115 provides that a "threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold."

26. The Administrator has defined "process" to mean "any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities." 40 C.F.R. § 68.3.

27. In June 1999, having held for use in its operations at the Facility 4,500 lbs. of Chlorine (CAS No. 7782-50-5), Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and was governed by 40 CFR Part 68.

28. Pursuant to the compliance schedule identified at 40 C.F.R. § 68.10, Respondent was required to comply with the requirements of 40 CFR Part 68 no later than June 21, 1999.

29. For purposes of compliance with 40 C.F.R. Part 68, in its Risk

Management Plan, Respondent acknowledged that it was required to meet Program 3 eligibility requirements.

30. The Respondent is subject to "Program 3" eligibility requirements for its chlorine process because the process does not meet the requirements of 40 C.F.R. § 68.10(b), since the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. § 68.25 is greater than the distance to any public receptor and the process is subject to the OSHA PSM standard set for at 29 C.F.R. § 1910.119, 40 C.F.R. § 68.10(d).

31. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 CFR Part 68 shall submit a single Risk Management Plan, as provided in 40 C.F.R. §§ 150–185.

32. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirement of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

33. During the inspection conducted on June 3, 2008, Complainant found the following alleged violations of RMP Requirements:

a. Failure to use the most recent Census data, or other updated information to estimate the population, as required under 40 C.F.R. § 68.30(c);

b. Failure to review and update the off-site consequence analysis at least every five years, as required under 40 C.F.R. § 68.36(a);

c. Failure to complete a revise analysis and submit a revised RMP within six months of a change in processes, quantities stored or handled, or any other

aspect that might reasonably be expected an increase or decrease the distance to the endpoint by a factor of two or more, as required under 40 C.F.R. § 68.36(b);

d. Failure to maintain records on data used to estimate population and environmental receptors potentially affected, as required under 40 C.F.R. § 68.39(e);

e. Failure to maintain documentation on the maximum intended inventory, as required under 40 C.F.R. § 68.65(c)(1)(iii);

f. Failure to maintain documentation on evaluation of consequences of deviation, as required under 40 C.F.R. § 68.65(c)(1)(iv);

g. Failure to maintain documentation on the electrical classification, as required under 40 C.F.R. § 68.65(d)(1)(iii);

h. Failure to maintain documentation on the relief system design and design basis, as required under 40 C.F.R. § 68.65(d)(1)(iv);

i. Failure to perform an initial process hazard analysis (PHA) that identified, evaluated, and controlled the hazards involved in the process, as required under 40 C.F.R. § 68.67(a);

j. Failure to establish a system to promptly address the PHA team's findings and recommendations and assure that recommendations are resolved in a timely manner and documented, as required under 40 C.F.R. § 68.67(e);

k. Failure to update and revalidate PHAs at least every five years, as required under 40 C.F.R. § 68.67(f);

l. Failure to retain PHAs and updates or revalidations for each process

covered, as well as the resolution of recommendations for the life of the process, as required under 40 C.F.R. § 68.67(g);

m. Failure to develop and implement written operating procedures that provide instructions or steps for conducting activities associated with each covered process consistent with the safety information, as required under 40 C.F.R. § 68.69(a);

n. Failure to provide each employee involved in operating a process, and each employee before being involved in operating a newly assigned process training in an overview of the process and in the operating procedures, as required under 40 C.F.R. § 68.71(a)(1);

o. Failure, in lieu of initial training for those employees already involved in operating a process on June 21, 1999, to certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures, as required under 40 C.F.R. § 68.71(a)(2);

p. Failure to provide refresher training at least every three years, or more often if necessary, as required under 40 C.F.R. § 68.71(b);

q. Failure to establish and implement written procedures to maintain the on-going integrity of the process equipment, as required under 40 C.F.R. § 68.73(b);

r. Failure to train each employee involved in maintaining the on-going integrity of process equipment, as required under 40 C.F.R. § 68.73(c);

s. Failure to follow recognized and generally accepted good engineering practices for inspections and testing procedures, as required under 40 C.F.R. § 68.73(d)(2);

t. Failure to ensure that the frequency of inspections and tests of process equipment is consistent with applicable manufacturer's recommendations, good engineering practices, and prior operating experiences or procedures, as required under 40 C.F.R. § 68.73(d)(3);

u. Failure to document the date of 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 tests on all process equipment, as required under 40 C.F.R. § 68.73(d)(4);

v. Failure to establish and implement written procedure to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sourced that affect a covered process, as required under 40 C.F.R. § 68.75(a);

w. Failure to certify that a stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed, as required under 40 C.F.R. § 68.79(a);

x. Failure to investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance, as required

under 40 C.F.R. § 68.81(a);

y. Failure to develop a written plan of action regarding the implementation of the employee participation program, as required under 40 C.F.R. § 68.83(a).

34. The above-described violations of the Risk Management Program regulations are violations of Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

35. 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 the CAFO.

36. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

VI. TERMS OF SETTLEMENT

30. Complainant and Respondent agree that the settlement of this matter pursuant to Section 22.13(b) of the Consolidated Rules, 40 C.F.R. § 22.13(b), is in the public interest and that the entry of this CAFO without engaging in litigation is the most appropriate means of resolving this matter.

31. Respondent stipulates that Complainant has jurisdiction over the subject matter of this CAFO, and Respondent waives any jurisdictional defenses.

32. Respondent neither admits nor denies the factual allegations and conclusions of law set forth above in this CAFO.

33. Respondent consents to the issuance of this CAFO, payment of a civil penalty, and completion of a Supplemental Environmental Project (SEP), as set forth below in this

CAFO.

34. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, and waives its right to appeal the Final Order accompanying this Consent Agreement.

VII. PENALTIES AND FEES

35. In consideration of the City of Grosse Pointe Farm's agreement to perform a supplemental environmental project (SEP), and such other factors as justice may require, U.S. EPA agreed to mitigate the penalty of $85,000 to $14,875.

36. The City of Grosse Pointe Farms must pay the $14,875 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

37. The City of Grosse Pointe Farms must send the check to:

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

38. A transmittal letter, stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604

Monika Chrzaszcz
Chemical Emergency Preparedness and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (SC-5J)
Chicago, Illinois 60604

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

40. If the Respondent does not timely pay the civil penalty, U.S. EPA may bring an action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The parties agree that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action in this matter.

41. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a penalty at the rate of at least six percent per year on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

42. The Respondent agrees to complete a SEP designed to protect public health and the environment which will include the following actions:

43. The Respondent agrees to dismantle the chlorine process on site and convert the process to the use of sodium hypochlorite by April 20, 2011. The Respondent represents that

the cost of this SEP will be at least $440,000. Respondent must spend at least $44,625 to purchase, install and operate equipment.

44. The Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO.

45. The Respondent further certifies that it has not received, and is not negotiation to receive, credit for the SEP in any other enforcement action.

46. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

47. Respondent must maintain copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

48. The Respondent must submit a SEP Completion Report to U.S. EPA by May 31, 2011. The SEP Completion Report must contain the following information:

a. Detailed description of the SEP as completed;

b. Description of any operating problems and the actions taken to correct the problems;

c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;

d. Certification that Respondent has completed the SEP in compliance with

this CAFO; and

e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

49. The Respondent must submit the SEP Completion Report to:

Attn: Monika Chrzaszcz (SC-5J)
Chemical Emergency Preparedness and Prevention Section
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

50. The Respondent must certify that the SEP Completion Report is true and complete by including the following statement signed by one of its officers:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

51. Following receipt of the SEP Completion Report, U.S. EPA will notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give the Respondent 30 days to correct the deficiencies; or

c. if the Respondent has not satisfactorily completed the SEP or the SEP report, U.S. EPA will seek stipulated penalties under Paragraph 54.

52. If U.S. EPA does not provide notice to Respondent under the provisions of

Paragraph 51, above, within 45 days from receipt of the SEP Completion Report, it shall be deemed that U.S. EPA has exercised option a. under Paragraph 51.

53. If U.S. EPA exercises option b. under Paragraph 51, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 54 below.

54. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to this CAFO, Respondent must pay a stipulated penalty of **$44,625.**

b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 80 percent of the required amount on the SEP, Respondent will not be liable for any stipulated penalty.

c. If Respondent failed to timely submit the SEP Completion report required by paragraph 48, above, Respondent must pay a stipulated penalty of $50 for each day after the report was due until it submits the report.

55. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Respondent.

56. The Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 36, 37 and 38, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

57. Any public statement that the Respondent makes referring to the SEP must include the following language, "The City of Grosse Pointe Farms undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against the City of Grosse Pointe Farms for violations of Section 112(r) of the Act, 40 C.F.R. Part 68."

58. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to

an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

59. For federal income tax purposes, The City of Grosse Pointe Farms agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

IX. GENERAL TERMS OF SETTLEMENT

60. Compliance with the terms of this CAFO shall constitute full settlement of this proceeding with respect to all civil and administrative claims alleged in the Violations section of this CAFO.

61. Nothing in this CAFO shall relieve Respondent from complying with any provision of the Act or any other applicable federal, State, or local environmental law or regulation.

62. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's

compliance with the Act and other applicable laws and regulations.

63. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with the regulations cited above, and to assess a civil penalty in an amount greater than assessed in this CAFO.

64. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory parties in identical form, then the entire CAFO shall be null and void.

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

66. Respondent and Complainant agree to bear their own respective costs and attorneys' fees.

67. The terms of this CAFO bind Respondent, its successors, and assigns. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the facility.

68. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

69. Respondent and U.S. EPA agree to the issuance and entry of the accompanying Final Order.

70. This CAFO shall become effective on the date that it is filed with the Regional Hearing Clerk, Region 5.

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry:

U.S. Environmental Protection Agency
Complainant

Date: 1-20-11 By: Richard C Karl

Richard C. Karl, Director
Superfund Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

City of Grosse Pointe Farms
Respondent

Date: 1/7/11 By: Shane Reeside

Shane Reeside, City Manager

Consent Agreement and Final Order
City of Grosse Pointe Farms
Docket No. CAA-05-2011-0026

FINAL ORDER

The foregoing Consent Agreement, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 1-24-11

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CAA-05-2011-0026

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Shane Reeside
City Manager
90 Kerby Road
Grosse Pointe Farms, Michigan 48236

I have further caused the original CAFO and this Certificate of Service, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 1st day of February, 2011.

Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5